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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 680)

795431

Supreme Ct. U.S.

Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, A HOLDER OF MISSOURI PACIFIC RAILROAD COMPANY 5¼% SECURED SERIAL GOLD BONDS, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 452

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 453

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 454

ANDREW W. COMSTOCK, PETITIONER,

vs.

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED NOVEMBER 24, 1947.

CERTIORARI GRANTED JANUARY 12, 1948.

United States Circuit Court of Appeals,
EIGHTH CIRCUIT.

No. 13,376. In Bankruptcy.

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,377. In Bankruptcy.

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,378. In Bankruptcy.

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,379. In Bankruptcy.

ANDREW W. COMSTOCK,
Appellant,

vs.

GUY A. THOMPSON, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor, et al.,
Appellees.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED MAY 21, 1946.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit at the May Term, 1947, of said Court, before the Honorable Archibald K. Gardner, the Honorable Joseph W. Woodrough and the Honorable Seth Thomas, Circuit Judges.

Attest:

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the 21st day of May, A. D. 1946, a transcript of record pursuant to appeals from orders of the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in certain causes wherein Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds, was Appellant and Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., were Appellees, New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company, was Appellant and Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., were Appellees, Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a

pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company, was Appellant and Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., were Appellees, and Andrew W. Comstock was Appellant and Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, et al., were Appellees.

Printed transcript of record, composed of three volumes, Volume I consisting of pages a to 680, inclusive, Volume II consisting of pages 681 to 1355, inclusive, Volume III consisting of pages 20723 to 20970, inclusive; and Volume of Exhibits paged from 1 to 312, inclusive, and Volume II of Exhibits paged from 313 to 362, inclusive, on which the appeals were heard in said Circuit Court of Appeals, and proceedings in said Circuit Court of Appeals composed of one volume, Volume IV, consisting of pages 1 to 47, inclusive, are in the words and figures following, to-wit:

(Notice of Appeal of Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5-¼% Secured Serial Gold Bonds, etc.)

(Filed February 20, 1946.)

In the

District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935

Notice Is Hereby Given That Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5-¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds, hereby appeals to the United States Circuit Court of Appeals for the Eighth Circuit from the order, judgment and decree numbered 2604-A and entered in the above entitled proceedings on the 22nd day of January, 1946, which order, judgment and decree, among other things,

(I.) overrules Andrew W. Comstock's objections to the claim filed in the above entitled proceedings by the Missouri Pacific Railroad Company against the New Orleans, Texas and Mexico Railway Company, and the Estate thereof (hereinafter referred to as the inter-company claim), which objections are sometimes also referred to as Comstock's objection No. 19 and related objections, to the extent that they are dependent on said objection No. 19 (said related objections being objections numbered 1, 2, 3, 4, 5, 6, 7, 8, 13 and 26 and the claims for equitable treatment), said objection No. 19 and related objections

having been included among Andrew W. Comstock's objections to the Plan of Reorganization referred to in said order, judgment and decree, and

(II.) allows the said inter-company claim; and

from each and every part of said order, judgment and decree, its findings of fact and conclusions of law, and the opinion of the District Court; and from each and every part of the foregoing.

WM. H. BIGGS,
Attorney for Andrew W. Comstock, Appellant,
Security Building, St. Louis (2) Missouri.

Dated: St. Louis, Mo.
February 20, 1946.

(Notice of Appeal of New Orleans, Texas and Mexico Railway Company.)

(Filed February 20, 1946.)

In the

District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935

Notice Is Hereby Given That the New Orleans, Texas and Mexico Railway Company, a debtor, in the above entitled proceedings, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of

said New Orleans, Texas and Mexico Railway Company, hereby appeals to the United States Circuit Court of Appeals for the Eighth Circuit.

from the order, judgment and decree numbered 2604-A, and entered in the above entitled proceedings on the 22nd day of January, 1946, which order, judgment and decree, among other things,

(I.) overrules objections to the claim filed in the above entitled proceedings by the Missouri Pacific Railroad Company against said New Orleans, Texas and Mexico Railway Company, and the estate thereof (hereinafter referred to as the inter-company claim), which objections are sometimes also referred to as Comstock's Objection No. 19 and related objections to the extent that they are dependent upon said Objection No. 19, (said related objections being Objections 1, 2, 3, 4, 5, 6, 7, 8, 13 and 26 and the claims for equitable treatment); and

(II.) allows said inter-company claim; and

from each and every part of said order, judgment and decree, its findings of fact, and conclusions of law, and the opinion of the District Court, and from each and every part of the foregoing.

WM. H. BIGGS,
Attorney for Andrew W. Comstock on behalf of the New Orleans, Texas and Mexico Railway Company,
Security Building, St. Louis (2) Missouri.

Dated: St. Louis, Mo.
February 20, 1946.

(Notice of Appeal of Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, etc.)

(Filed February 20, 1946.)

In the

District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935

Notice Is Hereby Given That Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company, hereby appeals to the United States Circuit Court of Appeals for the Eighth Circuit.

from the order, judgment and decree numbered 2604-A, and entered in the above entitled proceedings on the 22nd day of January, 1946, which order, judgment and decree, among other things,

(I.) overrules objections to the claim filed in the above entitled proceedings by the Missouri Pacific Railroad Company against said New Orleans, Texas and Mexico Railway Company, and the estate thereof (hereinafter referred to as the inter-company claim), which objections are sometimes also referred to as Comstock's Objection No. 19 and related objections to the extent that they are dependent upon said Objection No. 19, (said related objections being Objections 1, 2, 3, 4, 5, 6, 7, 8, 13 and 26 and the claims for equitable treatment; and

(II.) allows said inter-company claim; and

from each and every part of said order, judgment and decree, its findings of fact, and conclusions of law, and the opinion of the District Court, and from each and every part of the foregoing.

WM. H. BIGGS,
Attorney for Andrew W. Comstock on behalf of Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company.

Dated: St. Louis, Missouri.
February 20, 1946.

(Notice of Appeal of Andrew W. Comstock.)

(Filed February 20, 1946.)

In the
District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company Debtor	In Proceedings for the Reorganization of a Railroad. No. 6935.

Notice Is Hereby Given that Andrew W. Comstock, petitioner, hereby appeals to the United States Circuit Court of Appeals for the Eighth Circuit, from an order entered in the above entitled proceedings on the 15th day of February, 1946 denying the petition of said Andrew W. Comstock for an order granting, among other things, leave to said petitioner to appeal in the name of Guy A. Thompson, Trustee for New Orleans, Texas and Mexico Railway Company, from an order, judgment and decree numbered 2604-A and entered in the above entitled pro-

ceedings on the 22nd day of January, 1946, which order, judgment and decree, among other things, overruled objections to the claim filed in the above entitled proceedings by the Missouri Pacific Railroad Company against the New Orleans, Texas and Mexico Railway Company, and the estate thereof; and from each and every part of said order.

WM. H. BIGGS,
Attorney for Andrew W. Comstock,
Security Building,
St. Louis (2) Missouri.

Dated: St. Louis, Missouri.
February 20, 1946.

(Recital of Mailing of Copies of Notices of Appeal to all Parties in Interest.)

The Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri duly mailed to all parties in interest copies of the respective Notices of Appeal filed by the aforesaid four appellants. Copies of Certificates of said Clerk as to such mailing are on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

(Findings of Fact, Conclusions of Law, and Order No. 2604-A overruling Comstock's Objection 19 and related Objections.)

(Filed January 22, 1946.)

(Order No. 2604-A.)

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor,	In Proceedings for the Reorganization of a Railroad. No. 6935.

The Interstate Commerce Commission (hereinafter called the "Commission") certified to this Court the Plan of Reorganization, as embodied in the Commission's Third Supplemental Order dated October 9, 1944, of the Debtor and subsidiary debtors, parties to these proceedings (excepting the subsidiary debtor Missouri Illinois Railroad Company), together with a transcript of the proceedings before the Commission. All parties in interest have been given due opportunity to file their objections in writing to said plan and their claims for equitable treatment, and have been heard or given an opportunity to be heard thereon at a hearing duly noticed pursuant to an Order of this Court, No. 2604 (R. 21031). Among others, Andrew W. Comstock (hereinafter called "Comstock"), a holder of $10,000 face value of 5¼% Secured Serial Bonds of Missouri Pacific (hereinafter called the "Secured Serial Bonds"), filed his objections numbered 1 to 27, inclusive, to said plan and his claims for equitable treatment (R. 21649). At the hearing on said plan, to wit: from January 9, 1945, to January 17, 1945. Comstock's objection numbered 19 and related objections, to the extent that they are dependent on said objection 19 and his claim for equitable treatment based thereon (said related objections being Nos. 1, 2, 3, 4, 5, 6, 7, 8, 13 and 26) were heard. On

the New Orleans acquired all of the capital stock, except directors' qualifying shares, and indebtedness (excepting an unimportant amount of obligations owing to general creditors) of seven other railroad corporations which are subsidiary debtors in these proceedings. From and after the acquisition of the capital stock and indebtedness of said seven other railroad corporations and until June 22, 1933, the New Orleans continued to own said capital stock and all of the indebtedness (excepting an unimportant amount of obligations owing to general creditors) of said seven other railroad corporations (Gr. Ex. 40). Included among said seven other railroad corporations were the San Antonio, Uvalde & Gulf Railroad Company, the Sugar Land Railway Company and the San Antonio Southern Railway Company (Gr. Ex. 40; Tr. 370). The New Orleans and its fourteen subsidiaries (not including the I-GN) are herein sometimes referred to as the "Gulf Coast Lines".

(b) There is pledged under the New Orleans First Mortgage of date April 1, 1924, all of the stock and all of the Bonds of the various other companies, which, with the New Orleans, are referred to as "Gulf Coast Lines". Notwithstanding the separate corporate entity of each of the constituent companies, the Gulf Coast Lines were at all times herein mentioned considered as a unit in the financing of said companies.

4. The record contains no evidence tending to show that the acquisition by the New Orleans during the years 1925, 1926 and 1927 of the capital stock and indebtedness of the seven other railroad corporations referred to in Paragraph 3 hereof was in any way disadvantageous to the New Orleans or any of its security holders.

5. In the year 1923 the Missouri Pacific inaugurated an improvement and expansion program which was continued until the end of the year 1930. Over $200,000,000 was spent in carrying out this program. It included acquisition of a controlling interest in the capital stock of the New Orleans and a fifty percent. (50%) interest in The Denver & Rio Grande Western Railroad Company. In 1923 the Missouri Pacific System handled approximately

22% of the railroad traffic originating and terminating in the Southwestern area. By 1930 the Missouri Pacific System was handling approximately 27% of this traffic. During the period 1923-1930 average annual expenditures by the Missouri Pacific for additions and betterments amounted to $23,755,000. This compares with average annual expenditures of $7,118,000 for the period 1917-1922, $5,988,000 for the period 1931-1939, and $10,293,000 for the period 1940-1943 (Tr. 1024-32; Gr. Ex. 25).

6. In or about April 1924 the Missouri Pacific entered into an agreement providing for the purchase by the Missouri Pacific on June 2, 1924 of 37,500 shares of the capital stock of the New Orleans at a price of $120 per share, payable in the 7% Notes of Missouri Pacific maturing September 1, 1925, and secured by the pledge of the stock so purchased (Ck. Ex. 91). Said agreement was consummated and by the end of the year 1924 the Missouri Pacific had acquired 86,766 shares of the capital stock of the New Orleans, being approximately 58% of said capital stock (Ck. Ex. 110). Thereafter the Missouri Pacific continued to acquire additional shares of the capital stock of the New Orleans until April 1932, when its holdings of said capital stock amounted to 139,731 shares, or 93.15% of the entire issue. On January 7, 1925 officers and directors of the New Orleans and its subsidiaries, nominated by the Missouri Pacific, were duly elected (Tr. 1015). From and after said date and until June 22, 1933 the Missouri Pacific caused its nominees to be elected as officers and directors of the Gulf Coast Lines Company. During said period more than a majority of the directors and officers of the Gulf Coast Lines companies were also directors and/or officers of the Missouri Pacific (Ck. Ex. 9-21-E).

7. In the year 1926 the Missouri Pacific issued $13,156,000 principal amount of its Secured Serial Bonds and pledged to secure payment of said bonds 131,560 shares of the capital stock of the New Orleans (Ck. Ex. 93, 110; Tr. 407-9). The prospectus under which the Secured Serial Bonds were offered to the public stated that dividends were being paid on said capital stock at the rate of 7% per annum. The Secured Serial Indenture contains the following provisions:

"Unless and until (1) default shall have been made and be continuing in the payment of the interest on or of the principal of the Bonds or some one or more of them, or (2) one or more of the events of default specified in subdivisions (c), (d), (e) and (f) of Section 2 of Article Seven shall have happened and shall be continuing, the Railroad Company shall be entitled to receive the dividends payable on the Pledged Stock (other than stock dividends), and the Trustee, on the written request of the Railroad Company shall deliver to the Railroad Company proper orders in its favor for such dividends on any of the Pledged Stock standing in the name of the Trustee, in order that the Railroad Company may receive payment thereof for its own use, and the Trustee shall on demand pay to the Railroad Company any such dividends which may be collected or received by the Trustee". (ICC Ex. 170, p. 23)

* * * * * * *

"Nothing herein contained shall prevent:

* * * * * * *

"(e) the creation of any mortgage or other lien on the properties of the New Orleans Company, or of any subsidiary company, or any thereof, or the issue of bonds or obligations secured by such mortgage or other lien, or by any mortgage or other lien now existing thereon." (ICC Ex. 170, pp. 24-25)

Said Indenture also contains the following provision:

"The Railroad Company will not do or perform, or voluntarily permit to be done or performed, any act or thing by which the validity or priority of this indenture and pledge hereunder of the Pledged Stock, as herein provided, can or may be in any way or manner impaired or impeached."

8. The fifteen companies of the Gulf Coast Lines System operated approximately 1,736 miles of railroad, the principal lines of which extended from the lower Rio Grande Valley (hereinafter called the "Valley") in Texas around the Gulf Coast to Anchorage and New Orleans, Louisiana. This mileage included a considerable number

or branch or feeder lines. The New Orleans operated only about 11% of the total mileage. The Brownsville, which operated the line from Houston to Brownsville, Texas, is the most important railroad company in the group. Although the Brownsville operated about one-third of the Gulf Coast Lines mileage, it contributed from 63.6% to 84% of the income of the Gulf Coast Lines companies available for interest during the period 1925-1931 (Gr. Ex. 23, 24; Tr. 1014, 1105-6).

9. In the spring of 1924 when the arrangements for the purchase by the Missouri Pacific of the capital stock of the New Orleans were made, the railroad properties of the Gulf Coast Lines System were not in first class condition. Due to the war conditions which had prevailed during the period of Federal control, which was terminated in the year 1920, the railroad properties of the Gulf Coast Lines companies had not been adequately maintained. Although considerable sums had been expended for maintenance following the period of Federal control, and prior to June 2, 1924, there still remained on the last mentioned date a substantial accumulation of deferred maintenance (Tr. 909-911, 919-926, 933-945; Gr. Ex. 16, 17). With the acquisition of the capital stock of the New Orleans by the Missouri Pacific a substantial increase in the expenditures made by the Gulf Coast Lines for maintenance of roadway and equipment occurred (Gr. Ex. 16, 17). At the same time these companies also inaugurated an extensive improvement program. Of the $32,000,000 expended by the Gulf Coast Lines for additions and betterments during the fifteen-year period 1916-1931, approximately $22,000,000 was expended during the six years 1925-1930 (Tr. 1077; Gr. Ex. 18, 37). As a result of these maintenance and improvement programs, road and equipment of the Gulf Coast Lines were very substantially improved over the condition of said road and equipment at the beginning of the year 1925.

10. In the year 1909, the Brownsville or its predecessor extended its line of railroad into the lower Rio Grande Valley in Texas, at about which time it began to be developed as an important citrus and vegetable region (Tr.

958). During the period 1909-1931 the citrus and vegetable traffic of the Gulf Coast Lines became of increasing importance. Citrus and vegetables, which will hereinafter be referred to as "perishables", must be shipped in refrigerator cars (Tr. 963). The perishable traffic moves during the period from September to June in each year (Tr. 963). The greater portion of the perishables are shipped to St. Louis and the East (Tr. 960). Another and important part is shipped to Kansas City and points north and west of that city (Tr. 960). Prior to the year 1921 the Gulf Coast Lines had made various arrangements with connecting carriers for the handling of the perishable traffic from the Valley beyond the lines of the Gulf Coast Lines. None of these arrangements was satisfactory. Either the division allowed to the Gulf Coast Lines was too low or there was an inability to obtain the necessary supply of refrigerator cars (Tr. 961-969). In 1921 the Gulf Coast Lines entered into an arrangement with the Illinois Central Railroad Company for the handling of the perishable traffic which moved from the Valley to St. Louis and the East. This arrangement was considered by the independent management of the Gulf Coast Lines to be entirely satisfactory (Tr. 969). The schedules for the trains handling the perishable traffic between the Valley and St. Louis via Baton Rouge and the Illinois Central were 102 hours in 1924. The route by Baton Rouge involved ferrying of the trains across the Mississippi River at Anchorage, Louisiana. When control of the Gulf Coast Lines was acquired by the Missouri Pacific, the perishable traffic from the Valley began to move via Kinder, Louisiana, to St. Louis and the East (Tr. 977). During the period 1925-1932 the schedules for the trains handling the perishable traffic via Kinder were reduced on the dates shown below to the number of hours set opposite such dates, respectively:

January 1, 1925	97 hours
October 21, 1927	72 hours
October 30, 1929	64-½ hours
October 22, 1932	61-½ hours

There have been no reductions in these schedules since that date (Tr. 986-987).

11. In 1927 the Southern Pacific Company extended its line of railroad into the Valley. The Southern Pacific Company initially obtained about 20% of the perishable traffic moving out of the Valley by railroad. The Gulf Coast Lines have held the Southern Pacific Company to this ratio since that time. Without the aid of the Missouri Pacific, the Gulf Coast Lines could not have maintained their position against this competition (Tr. 933-934).

12. After the year 1927 a considerable amount of perishable traffic from the Valley began to move to Kansas City and beyond. The Southern Pacific Company and its connections have a shorter route to Kansas City than the Missouri Pacific System lines. The Missouri Pacific and its affiliates, the I-GN and The Texas & Pacific Railway Company, established schedules from Houston to Kansas City which enabled the Gulf Coast Lines to maintain their share of the perishable traffic moving to Kansas City and beyond. Without the aid of the Missouri Pacific, the Gulf Coast Lines would not have been able to meet this competition (Tr. 974-976).

13. The arrangements made between the Gulf Coast Lines and the Illinois Central allowed to the Gulf Coast Lines approximately 74% of the revenue derived from the vegetable traffic. When this traffic began to be delivered to the Missouri Pacific at Kinder, Louisiana, Mr. Baldwin, the President of the Missouri Pacific, directed Mr. J. A. Brown, the General Freight Agent and Traffic Manager of the Gulf Coast Lines, and Mr. Perkins, the Chief Traffic Officer of the Missouri Pacific, to work out the divisions of the revenue from the perishable traffic between the Gulf Coast Lines and the Missouri Pacific. They were instructed by Mr. Baldwin to make sure that the new arrangements would be liberal in favor of the Gulf Coast Lines (Tr. 977-978). These negotiations resulted in an arrangement which gave to the Gulf Coast Lines an advantage of about $5. per car of vegetables over the division which had theretofore been allowed to the Gulf Coast Lines under the arrangement with the Illinois Cen-

tral (Tr. 979-980). In 1936, as a result of the decision of the Interstate Commerce Commission in the Southwestern Rate Divisions case, the savings to the Gulf Coast Lines as a result of delivering the perishable traffic to the Missouri Pacific at Kinder amounted to $32.63 per car on citrus and $7.82 per car on vegetables (Tr. 981-982).

14. American Refrigerator Transit Company (hereinafter called "ART") is controlled jointly by the Missouri Pacific and the Wabash Railroad Company. The ART owns and services refrigerator cars which are leased to railroad carriers (Tr. 989). Shortly after the Missouri Pacific acquired a controlling interest in the New Orleans, the ART made arrangements with the Gulf Coast Lines to supply the Gulf Coast Lines with refrigerator cars for the handling of the perishable traffic from the Valley. Although prior to that time the Gulf Coast Lines had experienced refrigerator car shortages, there were no such shortages after the aforesaid arrangements with the ART (Tr. 963-965, 968-969, 989). The ART also made a special arrangement with the Gulf Coast Lines whereby the stated refrigeration charged to the shipper accrued to the Gulf Coast Lines, the latter being obligated to pay the actual costs of icing of refrigerator cars and incidental charges. This resulted in a profit to the Gulf Coast Lines during the period 1924-1932 of $6,171,876 (Tr. 989-990).

15. A comparison of the interchange of freight traffic at Kinder and at Baton Rouge for the years 1922 to 1931 indicates that the delivery of the perishable traffic to the Missouri Pacific at Kinder in 1924 and thereafter did not result in any substantial reduction of the freight delivered to the Gulf Coast Lines at Baton Rouge. A comparison for the years 1922-1931 of the total carloadings for all United States Class I railroads with (1) total carloadings received by the Gulf Coast Lines from all railroads, (2) total carloadings received by the Gulf Coast Lines from the Missouri Pacific and the I-GN, and (3) total carloadings received by the Gulf Coast Lines from all roads other than Missouri Pacific and the I-GN, shows that in each of the years after 1924 the Gulf Coast Lines

were in a relatively better position from a traffic stand point than the railroads of the United States generally. This comparison also shows that, although the Gulf Coast Lines received somewhat less traffic from non-System lines after 1924, it was more than made up by the receipts from the Missouri Pacific and the I-GN (Ex. 21 and 22).

16. During the period 1925-1932 the Missouri Pacific advertised the products of the Valley in various publications and sent exhibit cars throughout the United States for the purpose of exhibiting the products of the Valley (Tr. 998).

17. The improvement and expansion program referred to in Paragraph 3 hereof was financed by borrowing and by reinvestment of earnings. During the period 1917-1927 the Missouri Pacific paid no dividends (Tr. 1034, 1214). During that period approximately $49,000,000 available for dividends was put into the improvement program. The remainder of the cost of this program was financed through borrowing (Tr. 1034). As funds were needed by the Missouri Pacific for improvements, they were obtained by short term borrowings. It was not feasible to issue a few bonds each time that funds were needed. Instead the short term borrowings were permitted to accumulate to a point where they could be refunded by a bond issue large enough to be saleable (Tr. 1034-1035, 1035-1050; Gr. Ex. 26, 27 and 28). The same pattern was followed by the Gulf Coast Lines (Tr. 1034-1035). A typical Gulf Coast Lines' financing cycle ended in February 1928 (Tr. 1045). During that cycle $6,683,739 was spent by the Gulf Coast Lines for additions and betterments (Gr. Ex. 29, Tr. 1045). From time to time as funds were needed for these additions and betterments, the New Orleans obtained them by means of short term borrowings. After the short term borrowings had accumulated to approximately $4,500,000, an issue of first mortgage bonds of the New Orleans was sold to underwriters and the short term loans were refunded (Tr. 1040-42, 1045-50). The new cycle, which began in 1928, was interrupted by the depression. The advances which the Missouri Pacific had made to the New Orleans in this new cycle could not be refunded due to

the fact that market conditions rendered it impossible to sell new securities (Tr. 1050, 1062-8).

18. During the period from March 1929 to February 1933, both inclusive, the Missouri Pacific advanced to the New Orleans the net sum, after deducting principal repayments, of $10,565,226.78 (Ck. Ex. 1, Gr. Ex. 2). All but $210,000 principal sum of these advances are represented by three promissory notes as follows: one dated April 15, 1932 in the sum of $400,000, the second dated January 27, 1933 in the sum of $2,498,500, and the third dated February 28, 1933 in the sum of $7,456,726.78 (ICC Ex. 227). The second and third of said notes are held by RFC as pledgee. The third of said notes was authorized by an order of the Commission made on or about February 25, 1933 pursuant to Section 20(a) of the Transportation Act (ICC Tr. 536). The decision of the Commission with respect to such authorization is reported in volume 189 of the Interstate Commerce Commission reports at page 600 (Abstract of Evidence before ICC Vol. 1, p. 224). Said advances fall into two categories: (1) those made during the period when dividends were being paid on the capital stock of the New Orleans (November 30, 1928-November 27-31), and (2) those made after that time and prior to the date of bankruptcy (December 28, 1931-March 31, 1933) (Tr. 1058-1060). The basic and underlying purpose of the advances made during the first of these two periods was to enable the Gulf Coast Lines to make additions and betterments to their properties (Tr. 1042-1064; ICC Tr. 531-534; ICC Ex. 227). The immediate purpose of the advances mentioned in the preceding sentence was to reimburse the treasury of the New Orleans for expenditures for additions and betterments. During this period the net cumulative amount of advances was $7,416,544. This compares with the cumulative net increase in the investment of the Gulf Coast Lines in road and equipment during the same period of $7,417,593 (Tr. 1059; Gr. Ex. 32). The second period, December 28, 1931-March 31, 1933, was one of deepening depression during which the Gulf Coast Lines sustained operating deficits. The advances made during this period were made for operating ex-

penses and interest and sinking fund installments on first mortgage and equipment trust obligations of the New Orleans, all of which were charges prior to the collateral securing the Secured Serial Bonds. The net amount of advances made during this second period was $3,148,683 (Tr. 1060; Gr. Ex. 32).

19. Included among the advances made by the Missouri Pacific to the New Orleans during the period November 30, 1928 to November 27, 1931 were the advances shown in the table below. During the same period the New Orleans disbursed certain dividend payments in the amounts and on the dates shown in said table (Gr. Ex. 32).

Advances		Dividends	
Amount	Date	Amount	Date
$ 250,000	2/28/29	$ 259,576	3/ 1/29
275,000	8/31/29	259,576	9/ 3/29
310,000	11/29/29	259,576	12/ 1/29
260,000	2/28/30	259,576	3/ 1/30
275,000	5/31/30	259,576	6/ 1/30
300,000	11/29/30	259,576	12/ 1/30
75,000	2/25/31	259,576	2/28/31
200,000	5/27/31	259,576	6/ 1/31
250,000	8/29/31	259,576	8/31/31
300,000	11/27/31	259,576	11/30/31 –)
			12/ 1/31)
$2,495,000		$2,595,760	

20. In December 1932 the Missouri Pacific applied to the Commission for authority to borrow from the Reconstruction Finance Corporation (hereinafter referred to as the "RFC") and to pledge to the RFC, among other collateral, advances of $9,955,226.78 made by the Missouri Pacific to the New Orleans and advances of $2,486,000 made by the Missouri Pacific to the I-GN (189 ICC 286; ICC Ex. 800). With respect to these advances to the New Orleans and the I-GN, the Commission made the following findings:

> "The advances aggregating approximately $12,441,000, upon which interest is being currently paid at the rate of 6 per cent per annum, represent open-account

indebtedness to the applicant by two of its controlled companies accumulated over a period of five years. All of these advances were used to pay for additions and betterments to the properties, except that during the last two years certain of the advances to the New Orleans, Texas & Mexico Railway Company were made to overcome operating deficits. In the case of both of the controlled companies the obligations to repay the advances lie between their first-mortgage bonds and their capital stock. In the case of the International-Great Northern Railroad Company they are senior as to the payment of interest on $17,000,000 of adjustment-mortgage bonds, but junior to that bond issue as to security." (189 ICC 286, 291; ICC Ex. 800)

The Commission authorized a further loan from the RFC to the Missouri Pacific of $2,500,000 and the pledge of collateral to secure the loans made by the RFC to the Missouri Pacific, which collateral included said $9,955,226.78 in principal sum of advances from the Missouri Pacific to the New Orleans. The New Orleans Notes so pledged with the RFC are in turn secured by $1,900,000 of First Mortgage Treasury bonds of the New Orleans.

21. Said further loan of $2,500,00 was made by the RFC to the Missouri Pacific and the latter pledged said $9,995,-226.78 principal sum of advances together with other collateral to secure its loans from the RFC. The aggregate amount of the loans now due and owing by the Missouri Pacific to the RFC and secured by said advances and other collateral is $23,134,800 together with interest thereon.

22. The Missouri Pacific was indebted to the Railroad Credit Corporation (hereinafter called the "RCC") in the principal sum of $2,072,317 as of December 31, 1942. The unpaid portion of this obligation, together with accrued interest thereon, is secured, subject to the prior lien of the RFC, by the pledge, among other collateral, of the collateral pledged to secure the loans made by the RFC to the Missouri Pacific.

23. With respect to the collateral pledged to secure the indebtedness owing by the Missouri Pacific to the RFC and

the RCC, respectively, the Commission made the following findings (R. 20761-2):

> "It may be added that certain of the junior creditors also contend that the excess in value, if any, of collateral securing the Finance Corporation, Railroad Credit Corporation and bank loans also fall within the category of free assets. The value of this collateral is discussed hereinafter. The Railroad Credit Corporation has a second lien upon all collateral securing the Finance Corporation loans. Such of the collateral as has a market value is subject to wide fluctuations in price. The record does not warrant a finding of any excess value of the collateral securing these loans over the amount of the loans."

Said findings are hereby affirmed.

24. The RFC and the RCC are bona fide pledges for value of the collateral pledged to secure the indebtedness owing by the Missouri Pacific to them respectively. The record contains no proof tending to show that at the times when the $9,995,226.78 principal sum of advances from the Missouri Pacific to the New Orleans was pledged to secure the indebtedness mentioned in paragraphs 21 and 22 hereof the RFC or the RCC had any knowledge or notice of any of the acts, matters and things complained of in Comstock's objection 19.

25. During the period November 30, 1928 to February 1, 1933 interest was charged on all but a minor portion of the advances at the rates of 5%, 5½% and 6%, respectively (ICC Ex. 226; Tr. 1300). The record contains no evidence which tends to show that interest at the rates of 5%, 5½% and 6% during this period were other than the customary rates of interest usually charged for similar types of loans.

26. On August 29, 1933 the Missouri Pacific filed with A. T. Cole, as required by Order of this Court No. 19 (R. 131) a proof of claim (hereinafter referred to as the "Proof of Claim") in the sum of $10,565,226.78, being the net balance of the advances made by the Missouri Pacific

to the New Orleans during the period March 1929 to February 1933, both inclusive (Ck. Ex. 1). This Proof of Claim was signed in the name of the Missouri Pacific by F. P. Johnson, its Vice President, although on August 29, 1933 the Trustees in Bankruptcy of the Missouri Pacific had been duly appointed. Guy A. Thompson, as Trustee of the Missouri Pacific, has duly adopted said Proof of Claim (Tr. 432-434).

27. The Proof of Claim is based only on advances made from March 1929 to February 1933, both inclusive. Advances from the Missouri Pacific to the New Orleans aggregating $800,000, made on November 30, 1928, December 30, 1928, January 31, 1929 and February 28, 1929, were repaid by the New Orleans prior to August 29, 1933 and were not included in the advances described in the Proof of Claim (Tr. 871-904; Gr. Ex. 2-15; ICC Ex. 226).

28. The Proof of Claim is based in part upon the following transaction:

Prior to October 31, 1932, the I-GN had advanced cash or delivered materials and supplies to the New Orleans and ten of its subsidiaries, for which as of that date the New Orleans and its subsidiaries were indebted in the sum of $1,261,009.84, including interest charged by the I-GN on such indebtedness. On the same date the I-GN was indebted to the Missouri Pacific in an amount in excess of $1,261,009.84. On October 31, 1932, the I-GN credited the New Orleans and said ten subsidiaries with payment of said sum of $1,261,009.84, the Missouri Pacific credited the I-GN with payment of a like amount of indebtedness owing by the I-GN to the Missouri Pacific, and the New Orleans obligated itself to the Missouri Pacific in a like amount. This transaction was accomplished by appropriate entries in the journals of the Gulf Coast Lines companies affected thereby, the I-GN and the Missouri Pacific (Tr. 874-882; Ck. Ex. 134).

Comstock has failed to show that the above described transaction adversely affected the New Orleans or any of its security holders.

29. The Proof of Claim is based in part upon the following transaction:

In or about March 1929 Missouri Improvement Company acquired in its name a tract of about 30 acres of land in Corpus Christi, Texas, at a cost of $109,179.60. The Missouri Improvement Company is a land title holding company and is a subsidiary of the Missouri Pacific. On March 25, 1929 the Missouri Pacific advanced to the New Orleans the sum of $109,179.60 which was applied to the payment of the purchase price of said tract of land. The Missouri Improvement Company acquired said tract of land as trustee for the New Orleans and in February 1932 the Missouri Improvement Company executed an instrument declaring itself as such trustee. Prior to the date of said instrument Missouri Improvement Company had sold three parcels included in the aforesaid tract, one on February 15, 1930, another on February 12, 1931, and the third on November 18, 1931. $8,800 representing the purchase price of one of these parcels, was paid directly to the New Orleans and the New Orleans applied said payment to the reduction of its indebtedness with the Missouri Pacific. The promissory notes representing the purchase price of the other two tracts were made payable to the New Orleans and delivered to it (Tr. 882-885; Gr. Ex. 4).

The record contains no proof tending to show that the transaction described in this Paragraph 29 was in any way disadvantageous to the New Orleans or any of its security holders.

30. During the period June 2, 1924 to June 22, 1933 the Gulf Coast Lines made regular monthly and annual reports to the Commission. Said reports showed detailed information concerning the financial condition of the GCL. During said period the Bureau of Accounts of the Commission caused frequent and thorough audits of the books of the GCL to be made by the auditors of said Bureau.

31. During each of the years 1925 to 1931, inclusive the New Orleans declared dividends at the rate of 7% per annum upon its capital stock. All of said dividends were

paid out of the earned surplus of the New Orleans or its net income after deducting all prior charges to income.

32. Consolidated earnings of the New Orleans and its Gulf Coast Lines subsidiaries for the period March 1, 1916 to December 31, 1931 amounted to $15,968,390 (Gr. Ex. 38, 40). All dividends declared by the New Orleans during the same period amounted to $13,649,941 (Gr. Ex. 40). The consolidated balance sheet of the Gulf Coast Lines as of August 31, 1931 showed total assets of $87,565,086.36, capital stock of $15,000,000, and a surplus of $7,978,780.60 (ICC Ex. 117).

33. The condition of road and equipment of the Gulf Coast Lines was substantially improved during the period 1925-1931 when compared with the condition of road and equipment of the Gulf Coast Lines prior to 1925. Similarly maintenance of railroad properties of the Gulf Coast Lines during the period 1925-1931 was substantially better than it had been during the period prior to 1925. During the period 1925-1931 the railroad of the Gulf Coast Lines was adequately maintained and was adequately supplied with equipment. Control of the Gulf Coast Lines by the Missouri Pacific resulted in substantially strengthening the competitive position of the Gulf Coast Lines and substantially improving and increasing the efficiency of the railroad properties of the Gulf Coast Lines. Upon all of the facts, the Court concludes that the control of the Gulf Coast Lines by the Missouri Pacific during the period January 1, 1925 to March 31, 1933 was beneficial to the Gulf Coast Lines and the security holders of the New Orleans and that the advantages derived by the Gulf Coast Lines and the security holders of the New Orleans from such control far outweigh the amount of the dividends paid by the New Orleans during said period. The advances in the amount of $10,565,227 made by the Missouri Pacific to the New Orleans from March 1929 to February 1933, both inclusive, were necessary and beneficial to the Gulf Coast Lines and the security holders of the New Orleans. The Missouri Pacific, its officers and directors acted in good faith in their dealings with the Gulf Coast Lines

and with due regard to the rights of the New Orleans and its security holders.

34. These proceedings were commenced on March 31, 1933. Early in the year 1934 the trustees in bankruptcy of the debtors herein retained Messrs. Price, Waterhouse & Co., a firm of auditors, to make an investigation of the financial affairs of the Missouri Pacific and its subsidiaries including the Gulf Coast Lines (Tr. 435-6; R. 1759-1764). Price, Waterhouse & Co. completed their audit and copies of it were filed with this Court and mailed to all parties who had appeared in the proceeding or their counsel (Tr. 434-6). This report included consolidated income statements and balance sheets and income statements and balance sheets for each of the Gulf Coast Lines Companies (Tr. 455-7). This report disclosed that as of the time of the commencement of these proceedings Missouri Pacific was the owner of approximately 93% of the capital stock of the New Orleans; the details of the capitalization of each of the Gulf Coast Lines Companies and the fact that the New Orleans had paid regular dividends at the rate of 7% per annum throughout the period 1925-1931 (Tr. 455-7; see also Price, Waterhouse report filed in these proceedings).

35. Pursuant to an order of this Court the Trustees retained special counsel for the purpose of studying the Price, Waterhouse reports and making an investigation to determine whether or not there were any irregularities in the administration of the affairs of the Missouri Pacific and its subsidiaries during the period prior to the commencement of these proceedings (R. 1759). During the course of the investigation of said special counsel, to wit, on July 8, 1935, a conference was held in St. Louis, Missouri, to consider the result of the investigation of said special counsel to that date. This conference had been called by Guy A. Thompson, one of the trustees in bankruptcy, and was attended by him and counsel for various mortgage trustees and protective committees interested in these proceedings. One of those present at said conference was one of the counsel who represented Comstock at the

hearing before this Court on Comstock's objection 19 and related objections, although at the time of said conference said counsel did not represent any Secured Serial Bondholder. At the conclusion of said conference said Guy A. Thompson requested those present for any suggestions concerning any other matters which ought to be investigated. No suggestions having any bearing on the matters complained of in Comstock's objection 19 and related objections were ever received by the trustees in bankruptcy until said trustee received the letter referred to in paragraph 41 hereof (Tr. 445).

36. Subsequent to the date of said conference, and as a result of the investigation of special counsel to the trustee, an order was entered herein authorizing examinations under Section 21-a of the Bankruptcy Act (R. 2973). The trustee in bankruptcy received no suggestions from any interested party that said 21-a examinations should be directed toward any of the matters complained of in Comstock's objection 19 and related objections (Tr. 453-4).

37. In the year 1936 the trustee in bankruptcy filed a motion in these proceedings in which he reported that he had found no irregularities of the kind now complained of in the Comstock objection 19 and related objections (Tr. 448; R. 3383). Said motion suggested to this Court that the Commission be requested to furnish any information which it might have requiring further investigation. An order was entered upon said motion requesting the Commission's suggestions concerning any matters which might require further investigation (R. 3385). The Commission called attention to no matters requiring investigation (Tr. 449).

38. From time to time since the commencement of these proceedings at least seven representatives of various groups and individuals holding securities of the New Orleans have intervened in these proceedings before the Commission or before the Court. Of said representatives five have represented one or more Secured Serial bondholders or holders of Common Stock of the New Orleans.

39. The first Plan of Reorganization in these proceedings was the Missouri Pacific's original plan which was filed on October 21, 1935. The Commission's hearings on the Missouri Pacific's original plan and other plans of reorganization filed in these proceedings were commenced on February 4, 1936 and were conducted intermittently thereafter until September 30, 1937. During these hearings the Missouri Pacific and representatives of the New Orleans security holders put in evidence detailed information about the Gulf Coast lines and their financial affairs during the period prior to June 22, 1933. The Commission's report and order approving its first Plan of Reorganization was promulgated on or about January 10, 1940. Hearings on the Commission's first Plan were held before this Court in July and October, 1940. In July, 1941 this Court approved the first Plan (R. 14959). Appeals were taken from the order approving the Commission's first Plan. Said appeals were remanded and this Court returned the Plan to the Commission for further proceedings on July 29, 1943 (R. 1881). Further hearings were held before the Commission's Director of the Bureau of Finance and one of its examiners in October, 1943. Except as stated in paragraph 41 hereof, up to that time, no representative of any secured serial bondholder had asserted any claim having any connection with Comstock's objection 19 and related objections.

40. At said hearing in October, 1943 Comstock appeared by counsel. During the course of said hearing said counsel attempted to cross-examine a witness concerning certain matters related to Comstock's objection 19. Objections to such examination were sustained upon the ground that the examination had no relationship to the direct examination of the witness (R. 20841-2). Comstock made no attempt at said hearing to make said witness his own or to examine other witnesses concerning the matters complained of in Comstock's objection 19.

41. On or about October 1, 1943 and a few days prior to the commencement of the hearing mentioned in paragraph 40 hereof Comstock's counsel wrote a letter to the trustee of the New Orleans demanding that said trustee

object to the Proof of Claim. Comstock took no further action concerning the matters complained of in his objection 19 and related objections until November, 1944 at which time he filed a petition asking leave to object to the Proof of Claim. This Court denied said petition without prejudice on December 6, 1944. A similar petition had been filed by one Foley in July, 1944 and was denied (R. 20503). Comstock's objections to the Plan containing his objection 19 were filed in November, 1944.

42. The proponents of the Plan and other interested parties have been seriously prejudiced by failure to bring to the attention of the Court or of the Trustee of the New Orleans the matters complained of in Comstock's objection 19 in due time. Some of the transactions complained of in Comstock's objection 19 occurred more than twenty years ago. Many of the witnesses who had personal knowledge of and familiarity with some or all of the important facts involved in said objection 19 are now dead. Some of these witnesses are:

H. R. Safford, Executive Vice President and Chief Operating Officer of the Gulf Coast Lines from December 1924 to the date of the institution of these proceedings, who died on April 10, 1943;

F. P. Johnson, Auditor of the Missouri Pacific and Vice President of the New Orleans and for a number of years during the period 1925-31 the Chief Financial Officer of the Missouri Pacific System, who died on April 11, 1938;

Frank Andrews, a member of the Board of Directors of the New Orleans and its general counsel, who died on December 8, 1936;

O. P. Van Sweringen, Chairman of the Board of the Missouri Pacific and the New Orleans in the latter part of the period 1925-1933, who died on November 23, 1936;

L. A. David, General Superintendent of the Missouri Pacific and Assistant General Manager of the Gulf Coast Lines, who died on January 11, 1939;

E. J. White, Vice President and General Solicitor of the Missouri Pacific, who died on December 29, 1935. (Affidavit of Thos. T. Bailey filed herein on January 19, 1945.)

43. Much time and effort has been expended by the parties to these proceedings, the Commission and this Court in an effort to accomplish the reorganization of the debtors in these proceedings.

44. Guy A. Thompson, the trustee in bankruptcy, and his counsel have afforded to Comstock and his counsel every reasonable facility for obtaining any available information from the records, officers and employees of the trustee pertaining to the matters complained of in Comstock's objection 19. The witness, Delaney, an accountant employed by Comstock, was permitted to go to the offices of the Missouri Pacific in St. Louis and the offices of the Gulf Coast Lines in Houston, Texas, and there to examine the available books of account and other records requested by said Delaney. During the course of the hearings before this Court in January and March, 1945 the trustee in bankruptcy, his counsel and his officers and employees made available to Comstock all such information as Comstock reasonably requested.

45. The record contains no evidence tending to show that Guy A. Thompson has or had any personal interest which would in any way conflict with his duties as trustee of any of the debtors in these proceedings. Said trustee has performed his duties as trustee of said debtors, in so far as they relate to the matters complained of in Comstock's objection 19 and related objections, with fidelity, diligence and dispatch. The investigation of the Gulf Coast Lines and the Missouri Pacific made by the said trustee was reasonable and adequate.

46. Comstock is the holder and owner of ten thousand dollars face value of Secured Serial Bonds which he purchased in the latter part of 1942 at a price of about 10% of their face value (ICC Tr. 5515, 5520).

47. The foregoing findings shall be taken and deemed to be findings of fact, and in addition, to the extent appropriate, conclusions of law.

Conclusions of Law.

1. This Court has jurisdiction of the subject matter of these proceedings and of the debtors and their properties, their creditors and stockholders and of those having claims against or interests in the debtors or any of them or their respective properties.

2. On the merits, Comstock's objection 19 and related objections, to the extent that they are dependent on said objection 19 (said related objections being Nos. 1, 2, 3, 4, 5, 6, 7, 8, 13 and 26) should be overruled and his claim for equitable treatment based thereon should be denied.

3. RFC is a bona fide pledgee for value of the two promissory notes of the New Orleans described in the Proof of Claim in the principal sums of $2,498,500 and $7,456,726.78, respectively, which notes represent an aggregate of $9,955,226.78 principal sum of the advances referred to in the Proof of Claim. Said notes in the hands of RFC as such pledgee, together with the interest thereon, are valid, binding and enforceable obligations of the New Orleans payable out of the assets of the trustee in bankruptcy of the New Orleans after payment of all claims ranking in priority thereto.

4. RCC is a bona fide pledgee for value of the two promissory notes mentioned in paragraph 3 of these Conclusions of Law, subject however to the prior lien of RFC thereon. Subject to said prior lien said two notes in the hands of RCC as pledgee, together with the interest thereon, are valid, binding and enforceable obligations of the New Orleans payable out of the assets of the trustee in bankruptcy of the New Orleans after payment of all claims ranking in priority thereto.

5. The trustee in bankruptcy of the Missouri Pacific is a bona fide holder for value of the promissory note of the

New Orleans described in the Proof of Claim in the principal sum of $400,000, representing a like principal sum of advances referred to in the Proof of Claim. Said note is a valid, binding and enforceable obligation of the New Orleans in the hands of the trustee in bankruptcy of Missouri Pacific payable out of the assets of the trustee in bankruptcy of the New Orleans after payment of all claims ranking in priority thereto.

6. The trustee in bankruptcy of the Missouri Pacific is a bona fide holder for value of the remaining $210,000 of advances referred to in the Proof of Claim. Said advances, together with interest thereon, are due and owing by the New Orleans and are payable out of the assets of the trustee in bankruptcy of the New Orleans to the trustee in bankruptcy of the Missouri Pacific after payment of all claims ranking in priority thereto.

7. The claims represented by the promissory notes and advances referred to in paragraphs 3, 4, 5 and 6 of these Conclusions of Law are senior to and take priority over all of the shares of Capital Stock of the New Orleans, including such shares of said stock as are pledged to secure the Secured Serial Bonds.

8. The trustee in bankruptcy of the Missouri Pacific has duly and validly adopted as his own the Proof of Claim. The Proof of Claim should be allowed in the sum of $10,565,226.78, together with interest thereon as follows:

Upon the sum of $2,498,500 at the rate of 5½% per annum from January 27, 1933;

Upon the sum of $7,456,726.78 at the rate of 5½% per annum from February 28, 1933;

Upon the sum of $400,000 at the rate of 6% per annum from April 15, 1932; and

Upon the sum of $210,000 at the rate of 6% per annum from February 1, 1933.

9. In allocating new securities to the RFC and the RCC under the Plan the Commission properly based said alloca-

tions in part upon the two promissory notes mentioned in paragraph 3 of these Conclusions of Law. The Commission properly excluded the claim represented by said two promissory notes in determining its allocation of new securities under the Plan to all other holders of claims against or interests in the debtors.

10. In allocating new securities under the Plan to the holders of Capital Stock of the New Orleans and to the holders of Secured Serial Bonds as pledgees of Capital Stock of the New Orleans the Commission properly excluded the claim represented by the note mentioned in paragraph 5 of these Conclusions of Law and the claim represented by the advances mentioned in paragraph 6 of these Conclusions of Law. In allocating new securities under the Plan to the unsecured creditors of the Missouri Pacific, including the holders of Secured Serial Bonds, to the extent that their claims are not satisfied by the pledged Capital Stock of the New Orleans, the Commission properly based said allocation in part upon the claims represented by the note and advances mentioned in paragraphs 5 and 6 of these Conclusions of Law.

11. In its dealings with the New Orleans during the period from January 9, 1925 to June 22, 1933 the Missouri Pacific acted in good faith and with due regard to its obligations, legal and equitable, to the New Orleans and its security holders.

12. The claims and interests of the holders of the Capital Stock of the New Orleans, including the holders of Secured Serial Bonds to the extent that they are secured by the pledge of said Capital Stock, are junior to the claims represented by the $10,355,226.78 of promissory notes of the New Orleans and the $210,000 of advances to the New Orleans mentioned in paragraphs 3, 4, 5 and 6 of these Conclusions of Law and said holders are not entitled to have said notes and advances or any of them subordinated to their said claims and interests. Such subordination would unjustly enrich the holders of the Capital Stock of the New Orleans and the holders of the Secured Serial Bonds.

13. Upon all the evidence the Court concludes that the effect of control by the Missouri Pacific of the Gulf Coast Lines was beneficial and advantageous to the New Orleans and the holders and pledgees of its securities.

14. All dividends declared and paid by the New Orleans during the years 1925 to 1931, inclusive, were paid either out of the earned surplus of the New Orleans available for dividends or out of the net income of the New Orleans after payment of all prior charges against income.

15. Comstock's objection 19 and related objections to the extent that they are dependent upon said objection 19 are not timely. Comstock and all other holders of Secured Serial Bonds are barred by laches from asserting Comstock's objection 19 and related objections to the extent that they are dependent upon said objection 19 or any other objections similar thereto.

16. Because of his failure to afford the Commission in accordance with the rules of the Commission an opportunity to consider the matters set forth in his objection 19 Comstock is not entitled to have a determination of said matters by this Court.

17. The trustees in bankruptcy of the Gulf Coast Lines and of the Missouri Pacific have performed their obligations as such trustees with fidelity, diligence and dispatch and their investigation to determine whether or not there had been any irregularities, fraud or misconduct in the administration of the affairs of said debtors prior to June 22, 1933 was reasonable and adequate and in conformity with their duties as such trustees.

18. The Plan

(a) is fair and equitable,

(b) affords due recognition to the rights of each class of creditors and stockholders,

(c) does not discriminate unfairly in favor of any class of creditors or stockholders, and

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders,

in so far as it deals with the matters complained of in Comstock's objection 19 and related objections, to the extent that they are dependent on said objection 19.

Wherefore, it is ordered, adjudged and decreed that

I.

All findings of fact and conclusions of law hereinbefore set out shall be considered as incorporated in this order and decree.

II.

Comstock's objection 19 and related objections, to the extent that they are dependent on said objection 19 (said related objections being Nos. 1, 2, 3, 4, 5, 6, 7, 8, 13 and 26), are overruled and his claims for equitable treatment based thereon are denied.

III.

The Clerk of this Court shall send forthwith to the Interstate Commerce Commission a certified copy of the opinion of this Court, dated December 21, 1945, as modified by the orders of this Court entered herein on December 28, 1945 and January 8, 1946, and a certified copy of this order and decree.

January 22nd, 1946.

GEO. H. MOORE,
Judge, United States District Court.

(Petition No. 2888 of Andrew W. Comstock for Leave to Appeal from Order No. 2604-A in the Name of Guy A. Thompson, as Trustee of the New Orleans, Texas and Mexico Railway Company.)

(Filed February 13, 1946.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

To the Honorable, the Judges of the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri:

The petition of Andrew W. Comstock, residing at Evanston, Illinois, on his own behalf and on behalf of fourteen other holders of at least $900,000.00 principal amount of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, for whom petitioner is duly authorized to file this petition, and on behalf of all other owners and holders of said Bonds, respectfully represents on information and belief:

1. This petition is submitted upon the proceedings heretofore had in the above entitled proceedings with respect to the claim filed by the Missouri Pacific Railroad Company against the New Orleans, Texas & Mexico Railway Company and the estate thereof (hereinafter referred to as the "MOP claim") and upon all the documents filed in this Court pertaining to said claim.

2. Petitions were heretofore addressed to this Court respectively requesting, among other things, orders (1) disallowing and expunging the MOP claim, and (2) granting leave to file objections, either in the name of petitioner or in the name of Guy A. Thompson, as Trustee of the New

Orleans, Texas & Mexico Railway Company, to the MOP claim. Both petitions were denied by orders of the Court, the latter petition having been denied "without prejudice".

3. Petitioner heretofore filed objections to the MOP claim which were included among his objections to the Plan of Reorganization certified to this Court by the Interstate Commerce Commission on or about October 9, 1944. Thereafter, petitioner applied to this Court for an order continuing the hearings on said plan so as to permit the separate trial of the issues relating to the said MOP claim, but this Court denied the application.

4. Petitioner appealed from the orders of the Court denying leave to file objections, as aforesaid, to the MOP claim, and denying the application for a separate trial of the MOP claim. On January 6, 1945, petitioner applied to the United States Circuit Court of Appeals for the Eighth Circuit for an order staying the hearings on the Plan pending the determination of the aforementioned appeals. During the course of colloquy between said Court and counsel, one or more of the judges orally stated that the District Court had ample authority to regulate the course of proceedings so as to permit the fullest possible hearing on the merits of the MOP claim. By an order of the Circuit Court of Appeals for the Eighth Circuit, dated January 6, 1945, the said application for a stay was denied. Subsequently, after the commencement of hearings on the MOP claim, petitioner discontinued the aforementioned appeals.

5. After the presentation of evidence on behalf of petitioner in opposition to the MOP claim, this Court entered an order numbered 2707 separating the hearings with regard to the MOP claim from the hearings with regard to the Plan and separate orders were recently entered approving the Plan and overruling petitioner's objections to the MOP claim. Petitioner intends to file notices of appeal from each of said orders.

6. Petitioner is informed by counsel that he is entitled to appeal to the Circuit Court of Appeals for the Eighth

Circuit from each of said orders, and from each and every part thereof, as a matter of right. Petitioner is further advised by counsel, however, that it may be advisable at this stage of the proceedings to seek to obviate any possible technical objections to the procedure pursued by petitioner in seeking a full review on appeal of the merits of the issues presented by said appeals. Should this Court consider that petitioner's right to appeal from said order No. 2604-A is in any doubt whatsoever, it is respectfully submitted that this Court grant an order permitting petitioner, in the name of Guy A. Thompson, as Trustee of New Orleans, Texas & Mexico Railway Company, to appeal from said order. It is respectfully submitted that review by the Circuit Court of Appeals was contemplated by Congress in the enactment of Section 77 of the Bankruptcy Act as essential to the protection of all persons interested in the reorganization of railroads.

7. At no time during the course of these reorganization proceedings has there been a trustee of New Orleans, Texas & Mexico Railway Company who independently or otherwise investigated the validity of the MOP claim. On the contrary, as this Court has found in its order No. 2604-A, which, among other things, allowed the MOP claim, the Trustee of the New Orleans, Texas & Mexico Railway Company stated that he approved the MOP claim. At no time during these proceedings has the estate of New Orleans, Texas & Mexico Railway Company had the protection and supervision of an independent trustee. The Trustee, Guy A. Thompson, by virtue of his position as Trustee of the claimant and defendant estates finds himself necessarily in a position of conflicting trusts. There is, therefore, no person other than petitioner who is protecting the interests of the estate of New Orleans, Texas & Mexico Railway Company and the holders of the said 5¼% Secured Bonds.

Wherefore, this application is made for leave to appeal, in the name of Guy A. Thompson, Trustee of New Orleans, Texas & Mexico Railway Company, from the order, judgment and decree of this Court No. 2604-A, which, among other things, overruled petitioner's objections with regard

to said claim; to take any and all action necessary or proper in the successful prosecution of said appeal; and for such other and different relief as to this Court may seem just and proper.

ANDREW W. COMSTOCK,
Petitioner.

BIGGS, CURTIS & CROSSEN,
Attorneys.

State of Illinois }
County of Cook } ss.

Andrew W. Comstock, being duly sworn, deposes and says: That he is the petitioner in the above entitled proceeding; that he has read the foregoing petition, and knows the contents thereof; that the same are true as stated, except as to matters and things expressly stated to be on information and belief, and that as to those matters and things, he believes them to be true.

ANDREW W. COMSTOCK.

Subscribed in my presence and sworn to before me, by the affiant above named, this 8 day of February, 1946.

My commission expires Sept. 22, 1949.

MARTHA O'LEARY,
(Seal) Notary Public.

(Order No. 2888 denying Petition of Andrew W. Comstock for leave to Appeal from Order No. 2604-A in the name of Guy A. Thompson, as Trustee of the New Orleans, Texas and Mexico Railway Company.)

(Filed February 15, 1946.)

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In proceedings for the Reorganization of a Railroad. No. 6935.

Petition of Andrew W. Comstock for leave to appeal in the name of Guy A. Thompson, Trustee, New Orleans, Texas & Mexico Railway Company, Debtor, from the order, judgment and decree of this Court duly entered In the Matter of Missouri Pacific Railroad Company, Debtor, and numbered 2604-A, having come on to be heard on this 13th day of February, 1946, and Counsel for said Trustee being present and having stated to the Court that said Trustee does not expect to take an appeal from the aforesaid Order, and Counsel for Petitioner being present and having asserted that said Petitioner is entitled to appeal from said Order to the Circuit Court of Appeals for the Eighth Circuit in his own name as a matter of right, and the Court being fully advised in the premises:

It Is Ordered:

That said Petition of Andrew W. Comstock be and the same is hereby denied.

GEO. H. MOORE,
Judge, United States District Court.

Dated: February 13, 1946.

(Memorandum as to Cost Bonds on Appeals.)

The aforesaid four appellants respectively duly filed on February 20, 1946, with the Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, bonds in the principal amount of $250.00, with The Aetna Casualty and Surety Company as Surety. Copies of said bonds are on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

(Statement of Points to be relied upon on appeals of Andrew W. Comstock, New Orleans, Texas and Mexico Railway Company by Andrew W. Comstock, and Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company by Andrew W. Comstock from Order No. 2604-A.)

(Filed May 13, 1946.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company Debtor	In Proceedings for the Reorganization of a Railroad. No. 6935

The appellant, Andrew W. Comstock; the appellant New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock; and the Appellant, Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, serve a statement of the points on which they intend to rely on their separate, but related, appeals from Order No. 2604-A, dated and filed herein on the 22nd day of January, 1946, and entitled "Findings of Fact, Conclusions of Law and Order Overruling Comstock's Objection 19 and Related Objections," to-wit:

1. The Court erred in making the said order.

2. The Court erred in holding that, insofar as it deals with the matters complained of in Comstock's objection 19 and related objections to the extent dependent upon said objection 19, the Plan is

(a) fair and equitable, or

(b) affords due recognition to the rights of each class of creditors and stockholders, or

(c) does not discriminate unfairly in favor of any class of creditors or stockholders, or

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders.

3. The Court erred in overruling Comstock's objection 19 and related objections, and in denying his claim for equitable treatment based thereon.

4. The Court erred in holding that the RFC and RCC are bona fide pledgees for value of the promissory notes of NOTM described in the proof of claim in the principal sums of $2,498,500 and $7,456,726.78 and in holding that such notes in the hands of RFC, as pledgee, or subject to the prior lien of the RFC in the hands of RCC, as pledgee, together with the interest thereon, are valid, binding and enforceable obligations of NOTM payable out of the assets of the trustee in bankruptcy of NOTM.

5. The Court erred in holding that the trustee in bankruptcy of MOP is a bona fide holder for value of a promissory note of NOTM described in the proof of claim in the principal sum of $400,000, and in holding that said note is a valid, binding or enforceable obligation of NOTM in the hands of the trustee of MOP, payable out of the assets of the trustee in bankruptcy of NOTM.

6. The Court erred in holding that the trustee in bankruptcy of MOP is a bona fide holder for value "of the remaining $210,000 of advances referred to in the proof of claim."

7. The Court erred in holding that "said advances, together with interest thereon, are due and owing by NOTM, and are payable out of the assets of the trustee in bankruptcy of NOTM to the trustee in bankruptcy of MOP.

8. The Court erred in holding that the promissory notes and other advances mentioned in the proof of claim "are senior to and take priority over all the shares of capital stock of the New Orleans, including such shares of said stock as are pledged to secure the Secured Serial Bonds."

9. The Court erred in holding that the trustee in bankruptcy of MOP has duly and validly adopted as his own the proof of claim.

10. The Court erred in holding that the proof of claim should be allowed in the sum of $10,565,226.78, together with interest thereon.

11. The Court erred in holding that the proof of claim should be allowed in any amount.

12. The Court ered in holding that in allocating new securities to the RFC and the RCC under the Plan, the Commission properly based said allocation in part upon the notes from NOTM to MOP for $2,498,500, and $7,456,726.78 included in said proof of claim.

13. The Court erred in holding that in allocating new securities to the unsecured MOP creditors, including the holders of Secured Serial Bonds to the extent their claims are not satisfied by the pledged NOTM stock, the Commission properly based said allocation in part upon the $400,000. note from NOTM to MOP and the $210,000. "advances" from MOP to NOTM, included in said proof of claim.

14. The Court erred in holding that MOP acted in good faith or with due regard to its obligations, legal or equitable, to NOTM and its security holders with respect to its dealings with NOTM from January 9, 1925 to June 22, 1933.

15. The Court erred in failing to hold that MOP did not act in good faith and that MOP acted in breach of its fiduciary relationships to NOTM and to NOTM security holders and to MOP security holders, whose holdings were secured by NOTM stock with respect to its dealings with NOTM from January 9, 1925 to June 22, 1933.

16. The Court erred in holding that the claims and interests of the holders of NOTM stock, including the holders of Secured Serial Bonds to the extent that they are secured by NOTM stock, are junior to the notes and "advances" included in the proof of claim, and that such holders are not entitled to have said notes and "advances" subordinated to their claims, and in further holding that such subordination would unjustly enrich the holders of NOTM stock and the holders of Secured Serial Bonds.

17. The Court erred in failing to hold that the claims of the holders of NOTM and the holders of Secured Serial Bonds to the extent secured by NOTM stock are senior to the said notes and "advances".

18. The Court erred in holding that the MOP control of GCL was benficial and advantageous to NOTM.

19. The Court erred in failing to hold that MOP control of GCL was a great detriment and highly disadvantageous to NOTM, and that such control was exercised by MOP in a manner in breach of MOP's fiduciary relationships to GCL and NOTM.

20. The Court erred in holding that all NOTM dividends from 1925 to 1931 were paid either out of earned surplus of NOTM available for dividends, or out of net income of NOTM after payment of all prior charges.

21. The Court erred in failing to hold that each and every dividend declared and paid by NOTM during 1925 to 1931 was illegally paid out of capital of NOTM.

22. The Court erred in holding that Comstock's objection 19 and related objections to the extent dependent

upon said objection 19 are not timely, and that Comstock and all other holders of Secured Serial Bonds are barred by laches.

23. The Court erred in failing to hold that Comstock's objection 19 and related objections to the extent dependent upon said objection 19 are timely, and that neither Comstock nor Secured Serial Bond holders are barred from asserting them.

24. The Court erred in holding that Comstock is not entitled to have a determination of the matters set forth in objection 19 because of his alleged failure to afford the Commission an opportunity to consider the matters set forth in objection 19.

25. The Court erred in failing to hold that Comstock is entitled to have a determination by the Court of the matters set forth in objection 19, and that Comstock did afford the Commission an opportunity to consider the matters set forth in objection 19.

26. The Court erred in holding that the trustees in bankruptcy of GCL and MOP have performed their obligations as such trustees with fidelity or diligence or dispatch, and that their investigation to determine the existence of irregularities or fraud or misconduct in the administration of GCL and MOP prior to June 22, 1933 was reasonable or adequate or in conformity with their duties as trustees.

27. The Court erred in failing to hold that none of the trustees in bankruptcy of GCL and MOP have performed their obligations as such trustees with fidelity or diligence or dispatch, and in failing to hold that their investigation to determine the existence of irregularities or fraud or misconduct in the administration of GCL and MOP prior to June 22, 1933 was not reasonable or adequate or in conformity with their duties as trustees.

28. The Court erred in finding that NOTM and its subsidiaries (referred to as the "Gulf Coast Lines" in the

Findings of the Court) were at all times mentioned in the findings considered as a unit in the financing of said companies.

29. The Court erred in finding that the record contains no evidence tending to show that the acquisition by NOTM during 1925-1927 of seven railroads (including the San Antonio, Uvalde & Gulf Railroad, Sugar Land Railway Company, San Antonio Southern Railway Company) was disadvantageous to NOTM and its security holders.

30. The Court erred in failing to find that the acquisition by NOTM during 1925-1927 of said seven railroads was disadvantageous to NOTM, NOTM security holders, and to the holders of securities supported by NOTM stock or assets.

31. The Court erred in failing to find that MOP, as part of the transaction whereby it acquired control of NOTM in 1924, authorized and consented to the payment of dividends by NOTM out of capital in that year.

32. The Court erred in failing to find that under the terms of the indenture, pursuant to which the Secured Serial Bonds were issued, MOP undertook to observe the duties of a fiduciary with respect to the Secured Serial Bonds.

33. The Court erred in failing to find that the acquisition of branch or feeder lines by NOTM during 1925-1927 was made for the benefit of MOP and IGN and not for the benefit of NOTM.

34. The Court erred in failing to find that NOTM acquired stock of IGN for the benefit of MOP and not of NOTM.

35. The Court erred in failing to find that one of the principal reasons for the acquisition of control of NOTM by MOP was the desire of MOP to obtain control of IGN.

36. The Court erred in finding that without the aid of MOP, NOTM and its subsidiaries could neither have main-

tained their competitive position with respect to other railroads, nor have been able to meet the competition of other railroads in the Rio Grande Valley region in Texas.

37. The Court erred in finding that the loss of traffic by NOTM and its subsidiaries in consequence of MOP control was more than offset by traffic received from MOP and IGN as a result of MOP control.

38. The Court erred in failing to find that between 1925 and 1933 MOP wrongfully diverted or caused to be diverted from the lines of NOTM and its subsidiaries to the lines of MOP substantial amounts of profitable traffic originating on the lines of NOTM and its subsidiaries, which traffic should have moved over the lines of the latter.

39. The Court erred in finding that improvements and expansion of NOTM and its subsidiaries was financed by the reinvestment of earnings.

40. The Court erred in failing to find that the bonded indebtedness of NOTM increased by $13,600,000. from 1924 to 1933, and that such increase was largely due in the expansion program of NOTM dictated by MOP for the acquisition of properties to obtain traffic for MOP rather than NOTM.

41. The Court erred in failing to find that the financing of NOTM and subsidiaries, improvements and expansion, solely through borrowing by NOTM, was improper and illegal and a fraud upon the rights of the holders of Secured Serial Bonds.

42. The Court erred in finding that NOTM borrowings from MOP were made for the purpose of improvements, expansion or additions and betterments on the part of NOTM or its subsidiaries.

43. The Court erred in finding that as of February, 1933, the net advances by MOP to NOTM aggregated $10,565,226.78.

44. The Court erred in finding that "the basic and underlying purpose of the advances" from November 1928 to November 1931 was to enable NOTM and subsidiaries to make additions and betterments, and that "the immediate purpose of the advances * * * was to reimburse the treasury of the New Orleans for expenditures for additions and betterments."

45. The Court erred in finding that the net aggregate advances by MOP to NOTM from November 30, 1928, to November 27, 1931, was $7,416,544.

46. The Court erred in finding that advances by MOP to NOTM from December 28, 1931, to March 31, 1933, were made to meet NOTM operating expenses, mortgage interest and sinking fund obligations and equipment trust obligations.

47. The Court erred in finding that the net aggregate advances by MOP to NOTM from December 28, 1931 to March 31, 1933 was $3,148,683.

48. The Court erred in failing to find that advances by MOP to NOTM from November 30, 1928 to November 27, 1931, were made for the purpose of furnishing NOTM with cash for the payment of dividends by NOTM to MOP.

49. The Court erred in failing to find at the time of dividend payments from NOTM to MOP from November 30, 1928 to November 27, 1931, that NOTM did not have funds available for such payments.

50. The Court erred in failing to find that the "dividends" from NOTM to MOP from 1928 to 1931 were mere book entries as a result of simultaneous "advances" by MOP to NOTM in substantially the same amounts as the "dividends" from NOTM to MOP, and that both the "dividends" and the "advances" should be disregarded.

51. The Court erred in failing to find that the Commission finding that the advances from MOP to NOTM and IGN "were used to pay for additions and betterments"

and to overcome NOTM "operating deficits" was erroneous.

52. The Court erred in its finding which affirmed the finding of the Commission that the record before the Commission did not warrant a finding of any excess value with respect to the collateral securing the loans to MOP from RFC and RCC.

53. The Court erred in finding that RFC and the RCC are bona fide pledgees for value of NOTM notes or bonds delivered by MOP to RFC and RCC.

54. The Court erred in making any finding with respect to whether RFC and RCC are bona fide pledgees of NOTM notes or bonds delivered by MOP to RFC and RCC for value.

55. The Court erred in finding that MOP charged NOTM "customary rates of interest" during the period November 30, 1928 to February 1, 1933.

56. The Court erred in failing to find that at various times during the aforesaid period MOP charged no interest upon loans to subsidiaries other than NOTM.

57. The Court erred in failing to find that interest rates charged by MOP to NOTM were made by MOP without any regard to the interests or needs of NOTM, its security holders or the holders of Secured Serial Bonds.

58. The Court erred in finding that the MOP proof of claim against NOTM was filed on August 29, 1933, "as required by order of this Court No. 19."

59. The Court erred in finding that said proof of claim in the sum of $10,565,226.78 was for the net balance of advances made by MOP to NOTM.

60. The Court erred in failing to find that the wrongful waste of the assets of NOTM by MOP for the benefit of MOP have caused financial loss to NOTM and its subsid-

faries in excess of any claim filed against it by MOP, including any interest thereon.

61. The Court erred in failing to find that repayments by NOTM to MOP in the amount of $2,289,000. were arbitrarily allocated by MOP as it chose between principal and interest, and that MOP should not be permitted as a result of its wrongful domination of NOTM to fail to apply repayments of over $1,000,000. in reduction of principal, instead of interest.

62. The Court erred in finding that said proof of claim has been duly adopted by Guy A. Thompson, as Trustee of Missouri Pacific.

63. The Court erred in failing to find that Guy A. Thompson, as Trustee of NOTM should have filed objections to the said proof of claim.

64. The Court erred in finding that said proof of claim is based only on advances made from March 1929 to February 1933.

65. The Court erred in finding that prior to October 31, 1932, both NOTM, and its several subsidiaries were indebted to IGN in the sum of $1,261,009.84, or were indebted to IGN in any sum.

66. The Court erred in failing to find the respective debts purportedly owed to IGN by several subsidiaries of NOTM, as appears upon the books of said subsidiaries and of IGN.

67. The Court erred in finding that NOTM obligated itself to pay to MOP the indebtedness of IGN to MOP, or that NOTM received any consideration whatever for its assumption of IGN's indebtedness to MOP.

68. The Court erred in finding that Comstock failed to show that NOTM's assumption of IGN's indebtedness to MOP adversely affected NOTM, or its security holders.

69. The Court erred in failing to find that NOTM's assumption of IGN's indebtedness to MOP adversely affected

the holders of Secured Serial Bonds and that it was part of a fraudulent scheme on the part of MOP to the detriment of the holders of the Secured Serial Bonds.

70. The Court erred in finding that Missouri Improvement Co. acquired land in Corpus Christi, Texas, in 1929 for the benefit of or as trustee of NOTM.

71. The Court erred in failing to find that the loss of Missouri Improvement Co. in connection with the aforesaid purchase was improperly and illegally transferred to NOTM.

72. The Court erred in finding that the record contains no proof tending to show that the said purchase and consequent transfer of loss to NOTM was disadvantageous to NOTM, its security holders and the holders of Secured Serial Bonds.

73. The Court erred in finding that the monthly and annual reports by NOTM, and its subsidiaries, to the Commission disclosed the financial condition of NOTM and its subsidiaries.

74. The Court erred in failing to find that the Commission criticized MOP and NOTM for engaging in improper accounting practices and making incorrect financial reports to the Commission.

75. The Court erred in failing to find that full information on the transactions between MOP, NOTM, and NOTM subsidiaries was not before the Commission whenever it may have acted with respect to those transactions, as a result of the wrongful acts of the officers of MOP.

76. The Court erred in finding that all of the dividends paid by NOTM during the years 1925 to 1931, inclusive, were paid out of earned surplus or net income of NOTM.

77. The Court erred in failing to find that from 1924 to 1933, inclusive, NOTM at all times had a capital deficit.

78. The Court erred in failing to find that the surplus of NOTM was illegally written up by almost $3,000,000.

during 1924, and that such illegal write-up was larger than the largest sum carried as NOTM's surplus in any year from 1924 to 1932.

79. The Court erred in failing to find that even on the accounts maintained by NOTM which were improperly stated to show as high an income as possible, NOTM's net income during 1926-1931 was only $90,000, while dividends declared and paid during the same period aggregated $6,200,000, of which MOP received $5,500,000.

80. The Court erred in failing to find that "family line" bills due to NOTM from its subsidiaries were wrongfully carried on the NOTM balance sheet at full face value although such bills had not been paid for years, and the aggregate was steadily increasing.

81. The Court erred in failing to find that the financial condition of NOTM, including its capital and operating deficits, did not warrant the payment of dividends by NOTM.

82. The Court erred in considering the earnings of NOTM, and its subsidiaries, on a consolidated basis in relation to the dividends paid to NOTM for the period March 1, 1916 to December 31, 1931.

83. The Court erred in failing to find that the officers and counsel of NOTM, nominees of MOP, recognized that NOTM dividends should be justified by the earnings of NOTM alone, apart from the earnings of NOTM subsidiaries.

84. The Court erred in finding that NOTM, and its subsidiaries, had, on a consolidated basis, as of August 31, 1931, assets of $87,565,086.36 and surplus of $7,978,780.60.

85. The Court erred in failing to find that the dividends declared by Brownsville, 1926 to 1931 inclusive, were improperly and illegally declared and paid.

86. The Court erred in failing to find that the directors of MOP caused the Brownsville in 1931 illegally to de-

clare dividends of about 840%, of which only one-quarter were actually paid to NOTM and the remainder of which has not yet been paid, and that such extraordinary dividends were declared to permit a dividend by NOTM to MOP.

87. The Court erred in failing to find that during 1925-1932, Brownsville was forced to pay dividends to NOTM so that NOTM would be better able to pay dividends to MOP, and that Brownsville was able to pay dividends to NOTM during 1925-1932, only by failing to pay its indebtedness to NOTM for necessary operating expenses which increased by over $7,500,000. in that period.

88. The Court erred in finding that during 1925-1931, the railroad of NOTM and its subsidiaries was adequately maintained and equipped.

89. The Court erred in failing to find that the maintenance and operations of NOTM, and its subsidiaries, were subordinated to the insistent demands of MOP for the payment of dividends by NOTM.

90. The Court erred in finding that control of NOTM and its subsidiaries by MOP strengthened the competitive position of NOTM and its subsidiaries and improved the efficiency of their properties.

91. The Court erred in finding that control of NOTM and its subsidiaries by MOP, during the period January 1, 1925 to March 31, 1933, was beneficial to NOTM, its subsidiaries and security holders, and that the advantages derived by NOTM, its subsidiaries and security holders, from such control exceed the amount of dividends paid by NOTM during that period.

92. The Court erred in failing to find that the notes and "advances" included in the proof of claim would not have been made if NOTM had had the benefit of independent management.

93. The Court erred in failing to find that control of NOTM and its subsidiaries by MOP from 1924 to 1933, in-

clusive, were to the serious detriment of NOTM, its subsidiaries, security holders and the holders of Secured Serial Bonds.

94. The Court erred in failing to find that NOTM after the acquisition of control by MOP had been exploited by MOP solely for the purpose of MOP without regard to the needs of NOTM or of the holders of securities supported by NOTM stock or assets.

95. The Court erred in failing to find that to present an appearance of having earned profits, MOP required NOTM and its subsidiaries to adopt policies detrimental to the interests of NOTM, including gross neglect of road-beds and equipment; discharge of employees essential to maintenance; non-accrual of necessary sums representing depreciation and obsolescence; understatement of operating expenses; overstatement of income; neglect of repairs; deference of maintenance; and postponement of improvements.

96. The Court erred in failing to find that MOP charged rentals to NOTM which were excessive of an average of $235,000. annually, dictated an allocation of joint traffic expenses which was unfair to NOTM at an average of $125,000. annually; and required the purchase by NOTM of equipment for the use of MOP.

97. The Court erred in failing to find that to overstate the income of NOTM and its surplus in order to permit the payment of dividends, MOP caused NOTM to keep improper records and books of account so as to conceal the true condition of the finances and affairs of NOTM; and further caused NOTM to violate Commission regulations on accounting.

98. The Court erred in failing to find that MOP caused NOTM to bear an unfair and disproportionate amount of the expenses of MOP.

99. The Court erred in finding that the "advances" by MOP to NOTM from March, 1929, to February, 1933, were necessary or beneficial to NOTM, its subsidiaries or security holders.

100. The Court erred in failing to find that the so-called advances by MOP to NOTM from March, 1929, to February, 1933, were to the detriment of and in fraud of the rights of NOTM, its subsidiaries, its security holders and the holders of Secured Serial Bonds, and were made for the purpose of MOP's interest in conflict with those of NOTM, its subsidiaries, security holders and the holders of Secured Serial Bonds, and in breach of MOP's fiduciary obligations to NOTM, its subsidiaries, security holders and holders of Secured Serial Bonds.

101. The Court erred in finding that MOP, its officers and directors, acted in good faith in their dealings with NOTM and its subsidiaries, and with regard to the rights of NOTM and its security holders.

102. The Court erred in failing to find that MOP, its officers and directors, in their dealings with NOTM and its subsidiaries acted without regard to NOTM, its security holders and the holders of Secured Serial Bonds.

103. The Court erred in finding that the Price, Waterhouse & Co. report disclosed the details of the capitalization of NOTM and each of its subsidiaries.

104. The Court erred in failing to find that NOTM, its security holders and the holders of Secured Serial Bonds, have not received the protection of an actively functioning and independent trustee to which they are entitled under the National Bankruptcy Act as amended.

105. The Court erred in failing to find that the abuses occurring during the period of domination of NOTM by MOP were brought to the attention of the trustee in bankruptcy of NOTM, and were set forth in 1937 in the petition seeking the removal of Guy A. Thompson, as trustee of NOTM, filed by the Irving Trust Company, as trustee of NOTM, First Mortgage and Income Bonds and by the NOTM Committee.

106. The Court erred in finding that no suggestions having any bearing on the matters complained of in Com-

stock's objection 19 and related objections were ever received by the trustees in bankruptcy before October 1, 1942.

107. The Court erred in finding that Comstock did not attempt at a hearing before the Commission in October, 1943, to introduce proper evidence of the mismanagement of NOTM by MOP.

108. The Court erred in finding that the proponents of the Plan, or any other interested parties, have been prejudiced by the purported failure to bring to the attention of the Court, or of the trustee of NOTM, the matters complained of in Comstock's objection 19 and related objections, prior to the date upon which such matters were called to the attention of the Court, the Commission, and the trustee of NOTM.

109. The Court erred in failing to find that sufficient witnesses with personal knowledge of and familiarity with some or all of the important facts involved in Comstock's objection 19 and related objections, for a determination of the matters raised in said objections are both alive and available.

110. The Court erred in finding that Guy A. Thompson, as trustee of NOTM, has performed his duties as such trustee in respect of the matters complained of in Comstock's objection 19 and related objections with fidelity or diligence or dispatch.

111. The Court erred in failing to find that Guy A. Thompson, as trustee of NOTM, notwithstanding appropriate requests, failed to take any independent action for the protection of the interests of NOTM, its security holders and the holders of Secured Serial Bonds in connection with the MOP claim against NOTM.

112. The Court erred in finding that the investigation of NOTM, and its subsidiaries, and MOP, made by Guy A. Thompson was reasonable or adequate.

113. The Court erred in finding that Comstock is the holder and owner of only $10,000. face value of Secured Serial Bonds.

114. The Court erred in failing to find that Comstock is the holder and owner of $80,000. face value of Secured Serial Bonds, and that he filed his objection on behalf of himself and fourteen specified owners of at least $900,000. additional of said Bonds and also in behalf of all other owners and holders of said Bonds; and further, that his objections were joined in and adopted by the Committee for the Secured Serial Bonds.

115. The Court erred in failing to place the burden of the validity of the claim represented by the inter-company "advances" upon MOP, as the claimant, and erred in placing the burden on NOTM.

ANDREW W. COMSTOCK,
by WM. H. BIGGS,
His Attorney.

(Statement of Points to be relied upon on Appeal of Andrew W. Comstock from Order denying Petition for Leave to Appeal in the name of Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company from Order No. 2604-A)

In addition to points also appearing in the Statement of Points to be Relied Upon on Appeal duly served by the appellant, Andrew W. Comstock; the appellant, New Orleans, Texas and Mexico Railway Company by Andrew W. Comstock; the appellant, Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock in their separate but related appeals from Order 2604-A, the Statement of Points to be Relied Upon on Appeal duly served by the appellant, Andrew W. Comstock, in his appeal from the order of the District Court entered on February 15, 1946, denying the petition of Andrew W. Comstock for an order granting Andrew W. Comstock leave to appeal in the name of Guy A. Thompson, Trustee of New Orleans, Texas and Mexico

Railway Company from Order No. 2604-A included the following points, numbered as below:

1. The Court erred in making the said order denying said petition.

2. The Court erred in failing to grant the said petition on behalf of appellant for leave to appeal in the name of Guy A. Thompson, as Trustee of the New Orleans, Texas and Mexico Railway Company, from order number 2604-A, dated and filed herein January 22, 1946, and entitled "Findings of Fact, Conclusions of Law and Order Overruling Comstock's Objection 19 and Related Objections."

3. The Court erred in denying said motion made on behalf of appellant because the New Orleans, Texas and Mexico Railway Company, its estate and the security holders interested therein, including the holders of 5¼% Secured Bonds of Missouri Pacific Railroad Company, have not had the protection of an independent trustee of said New Orleans, Texas & Mexico Railway Company and the estate thereof with regard to the claim against said New Orleans, Texas & Mexico Railway Company and the estate thereof filed in the name of the Missouri Pacific Railroad Company in the above entitled proceedings.

4. The Court erred in making Order No. 2604-A dated and filed herein January 22, 1946, and entitled "Findings of Fact, Conclusions of Law, and Order Overruling Comstock's Objection 19 and Related Objections", and further erred in holding, in finding, in considering, in failing to hold and in failing to find the matters set forth hereinafter. (Points 5 to 118 of said Statement of Points are identical with and are stated in the same order as Points 2 to 115 of the Statement of Points Printed as Item No. 8 of this Designation. Said Item No. 8 is the Statement of Points to be relied upon on appeals of Andrew W. Comstock, New Orleans, Texas and Mexico Railway Company by Andrew W. Comstock, and Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company by Andrew W. Comstock from Order No. 2604-A.)

Statement of Errors and of Points on Appeal by Andrew W. Comstock From Order No. 2604-B Approving Plan of Reorganization of the Missouri Pacific Railroad Company.

(Filed May 13, 1946.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

Comes now Andrew W. Comstock, pursuant to Rule 75 (d) of the Rules of Civil Procedure for the District Courts of the United States, and states the following errors and points upon which he intends to rely on his appeal from Order No. 2604-B approving Plan of Reorganization of the Missouri Pacific Railroad Company:

1. The Court erred in making the said order.

2. The Court erred in finding that the plan of reorganization as contained in the Third Supplemental Order of The Interstate Commerce Commission, dated October 9, 1944, (hereinafter called the "Plan"), provides adequate means for the execution of the Plan.

3. The Court erred in finding that the Plan in all other respects complies with sub-section (b) of Section 77 of the Bankruptcy Act as amended.

4. The Court erred in finding that the Plan is predicated upon findings by the said Commission which are supported by material evidence and are in accordance with legal standards.

5. The Court erred in finding that the Plan is fair and equitable.

6. The Court erred in finding that the Plan affords due recognition to the rights of each class of creditors and stockholders.

7. The Court erred in finding that the Plan does not discriminate unfairly in favor of any class of creditors or stockholders.

8. The Court erred in finding that the Plan will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders.

9. The Court erred in ordering, adjudging and decreeing that all objections to the Plan, and all claims theretofore filed herein for equitable treatment by these appellants, be severally overruled and denied.

10. The Court erred in ordering, adjudging and decreeing that said Plan be in all respects approved.

11. The Court erred in approving the Plan.

12. The Court erred in approving the determination of the Commission in regard to valuation and new capitalization which is not supported by the evidence and is not made in accordance with legal standards.

13. The Court erred in being satisfied that there has been no departure from legal standards or any disregard of proper evidence by the Commission.

14. The Court erred in approving the Commission's action in refusing to provide for the payment in cash of the principal of the entire claim of the Reconstruction Finance Corporation, a secured creditor, with interest at 4% or less.

15. The Court erred in approving the Commission's action in refusing to provide for the payment in case of the principal of the entire claim of J. P. Morgan & Co., and others, collectively called "the banks", secured creditors, with interest at 4% or less.

16. The Court erred in approving the Commission's action in refusing to provide for the payment in cash of the entire claim of the Railroad Credit Corporation, a secured creditor, against the estate of the debtor, Missouri Pacific Railroad Company, with interest at 1%.

17. The Court erred in finding that the question of whether various securities should be retired for cash is left to the Court, and that the wisdom of such retirements can now be presented, and will be disposed of by the Court.

18. The Court erred in refusing to rule that the alternative offer of cash or securities to certain senior creditors is not feasible.

19. The Court erred in refusing to rule that the alternative offer of cash or securities to certain senior creditors will result in a higher capitalization than the Commission has held permissible.

20. The Court erred in refusing to rule that the alternative offer of cash or securities to certain creditors will result in a higher capitalization than the aggregate findings of value made by the Commission.

21. The Court erred in ruling that assurances have been given by certain representatives of large holders of securities, under the Plan for general mortgage bonds, Series B, that these representatives would not, subject to the approval of their boards of directors, permit the development of a corner but would recommend to their respective boards that sufficient of these bonds be placed upon the market within the required price limit to meet any need of the reorganization managers; and that the Court has no fear that these parties will fail to assist the reorganization managers in this regard.

22. The Court erred in affirming the findings of the Commission that as to the general-mortgage bonds, an agreement has been secured by the proponents of the Plan from certain of the parties to this proceeding, entitled to receive such bonds under the Plan, to sell to the reor-

ganization managers, if necessary, a sufficient amount of the bonds at the maximum price.

23. The Court erred in refusing to find that the record contains no material evidence tending to show that an agreement has been secured by the proponents of the Plan from certain of the parties to this proceeding who will be entitled to receive general-mortgage bonds to sell to the reorganization managers, if necessary, a sufficient amount of the bonds at the maximum price of $620.

24. The Court erred in refusing to find that the Plan makes allocations, to divers creditors of the three groups of railroads which are debtors herein and are to comprise the system, of new general-mortgage bonds, Series B, materially in excess of the approximately $38,499,000 of said bonds authorized by the Plan, and constituting a part of the new capitalization in said amount, and thereby exceeding the permissible capitalization by approximately $5,817,627, consisting of at least 5,817 of said bonds of the face value of $1,000. each.

25. The Court erred in approving the Plan in that the same makes allocations of general-mortgage bonds, Series B, which are about $5,817,627 over and above, and in excess of the authorized amount, number and face value of said bonds.

26. The Court erred in refusing to find that the Plan makes allocations to various creditors of Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company and International-Great Northern Railroad Company, of new common stock, Class A, materially in excess of the 911,840 of said shares authorized by the Plan, and constituting a part of the new capitalization authorized by the Commission in the amount of $91,184,000, and thereby exceeding the permissible capitalization by approximately $75,000,000 over and above and in excess of the authorized number, amount and stated value of said shares of stock.

27. The Court erred in approving the Plan in that it allocates the new common stock, Class A, in the aggre-

gated stated value of about $75,000,000 over and above the authorized number, amount and stated value of said shares.

28. The Court erred in refusing to find that if a greater number of shares are issued than are authorized by Section D of the Plan, the capitalization would thereby be increased.

29. The Court erred in finding as a fact, and in concluding as a matter of law, that any further issue of no-par common stock, with a stated value of $100 per share beyond the number of shares stated in Section D of the Plan, would not actually increase the total capitalization.

30. The Court erred in refusing to rule that any further issue of no-par common stock with a stated value of $100 per share, beyond the number of shares stated in Section D of the Plan, would be unlawful.

31. The Court erred in refusing to rule that any further issue of no-par common stock with a stated value of $100 per share, beyond the number of shares stated in Section D of the Plan, would proportionately reduce the value of each share of the common stock issued pursuant to Section D of the Plan, and would proportionately diminish the participation in the new system corporation of the holders of new common stock lawfully entitled thereto.

32. The Court erred in approving the scheme embodied in the alternative cash offer device, and erred in refusing to disapprove the same.

33. The Court erred in approving the Plan in that the same purports to make allotments and allocations to participating parties which are materially in excess of the permissible capitalization of the new system as determined by the Commission.

34. The Court erred in refusing to find that the Plan does not comply with clause (5) of sub-section (b) of Section 77 of the Bankruptcy Act as amended, in that the Plan does not provide adequate means for the execution

thereof, because the Plan purports to make allocations of bonds, stock and other securities to participating parties in amounts, exceeding permissible capitalization by about $82,000,000, which cannot lawfully be issued.

35. The Court erred in approving the Plan because the Commission did not determine and certify to the Court the value of the property used in railroad operation.

36. The Court erred in approving the Plan because the Commission did not determine and certify to the Court the value of certain property of divers debtors herein not used in railroad operation.

37. The Court erred in approving the Plan because the Commission did not determine and certify to the Court the value of the property of New Orleans, Texas and Mexico Railway Company to be acquired by the new system.

38. The Court erred in approving the Plan because the same provides that reorganization managers may fix any later January 1 as the effective date, and the law does not empower the Commission to grant such authority to reorganization managers.

39. The Court erred in approving the Plan because of the absence of findings by the Commission of the value of the 121,460 shares of the capital stock of New Orleans, Texas and Mexico Railway Company constituting the collateral securing the $12,140,000 principal amount of the 5¼% secured bonds outstanding.

40. The Court erred in approving the Plan because of its failure to allocate reorganization securities to the 5¼% secured bonds having a value and a moneys worth fully equivalent to the value of the 121,460 shares of capital stock of New Orleans, Texas and Mexico Railway Company securing said 5¼% secured bonds.

41. The Court erred in approving the Plan because of the failure of the Commission to comply with the require-

ment imposed on it of allocating to the 5¼% Secured Bonds the equitable equivalent of the rights surrendered.

42. The Court erred in approving the Plan because the new securities allotted to the 5¼% Secured Bonds are not the equitable equivalent of the collateral required to be surrendered.

43. The Court erred in approving the Plan because it deprives the 5¼% Secured Bonds of their collateral, without their consent, and without compensating them with the full equivalent thereof.

44. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it fails to give recognition to the fact that the 5¼% Secured Bonds are secured by collateral, and that said collateral has large value.

45. The Court erred in approving the Plan because it assumes that the position of the 5¼% Secured Bonds is junior to MOP's general mortgage bonds and to those ranking ahead of the general mortgage bonds.

46. The Court erred in failing to find that the 5¼% Secured Bonds are in a position like that of the Reconstruction Finance Corporation and various bank creditors.

47. The Court erred in failing to find that the 5¼% Secured Bondholders are a separate class of creditors without any lien relationship to the mortgage debt of MOP and their treatment under any plan must be based upon the value of their separate security.

48. The Court erred in approving the Plan because it permits other classes of creditors having no lien or claim whatsoever thereon to participate to the exclusion of, or prior to the 5¼% Secured Bonds, in the assets and earnings.

49. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it is based on the findings of the commission that

"Regarding the treatment of the junior claims of the system, namely, the Missouri Pacific general-mortgage bonds, serial 5¼-percent bonds, and convertible bonds, the New Orleans capital stock, and the International adjustment bonds, the following formulas were used by the negotiators of the compromise plan."

50. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it is based on the finding of the Commission that

"We also find that the treatment accorded the Missouri Pacific serial 5¼-percent bonds and that accorded the unsecured creditors of the Missouri Pacific and unsecured creditors and stockholders of the New Orleans (aside from the allocations of stock-purchase warrants) is justified by the total value and earning power of these properties and the value of the free assets of these debtors and, in view of the rights of prior creditors and within the new capitalization which we have found justified, represents the full extent of participation in the plan of reorganization to which they are entitled."

51. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it is based on the finding of the Commission that

"They would take the stock at $100 per share, if computed on the total amount of their claim, and the serial bondholders, who are secured collaterally by New Orleans capital stock, would receive only such amount of the new class-A common stock as the New Orleans stockholders are found in the plan to be entitled to receive, plus an additional amount in recognition of the control element of the pledged 80 percent of New Orleans stock, the remainder of the claim of the serial 5¼-percent bondholders not so satisfied being treated in the same manner as the claims of other unsecured creditors of the Missouri Pacific."

52. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it does not ade-

quately recognize the value of the assets of New Orleans, Texas & Mexico Company (hereinafter referred to as NOTM), and does not give adequate consideration to the earnings, the assets, and the cash position of the properties.

53. The Court erred in approving the Plan because it is unfair and inequitable by reason of the failure to give adequate consideration to the amount of cash and its equivalent in the hands of the Trustee of NOTM and to the net current assets of NOTM.

54. The Court erred in approving the Plan because it is unfair and inequitable because it fails to give consideration to the earnings of NOTM to date.

55. The Court erred in approving the Plan because the Commission relied on figures only up to July, 1943, and failed to use figures for the year 1943 and part of 1944, even though such figures were available.

56. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it is based on the finding of the Commission that

> "No system statements for 1943 of income available for payment of interest and net income are of record for any period subsequent to the first 7 months January-July, inclusive, the system amount at the end of that period being $32,514,678 and net income $17,581,670."

57. The Court erred in approving the Plan because it is unfair and inequitable in providing for consolidation of NOTM with MOP when such consolidation is to the detriment of the 5¼% Secured Bonds by not observing the legal requirements of affording the 5¼% Secured Bonds the exact equivalent of their collateral.

58. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it is based on the finding of said Commission without due observance of the statutory standards prescribed by S 77(e) of the National

Bankruptcy Act, as amended, that, upon a basis of separate reorganization, the total permissible capitalization of NOTM is $67,000,000.

59. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as the Commission made no finding with respect to the character and the amount of the assets of NOTM which are not productive of earnings.

60. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it is based on the assumption, without any evidence therefor, that "greater future earning will (not) result from the net increase in investment accounts."

61. The Court erred in approving the Plan because the Commission failed to give effect to the amount and character of investments in road and equipment during the trusteeship and particularly since December 31, 1939.

62. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it is based on the finding of the Commission that

> "From December 31, 1939, the day prior to the effective date of the Commission plan, to July 31, 1943, gross additions and betterments to road and to equipment of the Missouri Pacific (exclusive of two subsidiaries, Natchez & Louisiana Railway Transfer Company and Kansas-Missouri Elevator Company) have increased by $14,206,756 and $20,009,683, respectively, New Orleans $2,411,465 and $2,087,513, respectively, International $1,145,973 and $1,346,810, respectively, and system $17,837,648 and $23,443,906, respectively.
>
> "In the same period investment of the Missouri Pacific in road and equipment increased $22,322,770, New Orleans by $2,501,098, International by $1,175,822, and the system by $25,999,689. During this period, the system also acquired and entered in its balance sheet accounts as 'investment in affiliated companies—unpledged', the St. Joseph terminal properties, the

quately recognize the value of the assets of New Orleans, Texas & Mexico Company (hereinafter referred to as NOTM), and does not give adequate consideration to the earnings, the assets, and the cash position of the properties.

53. The Court erred in approving the Plan because it is unfair and inequitable by reason of the failure to give adequate consideration to the amount of cash and its equivalent in the hands of the Trustee of NOTM and to the net current assets of NOTM.

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Bankruptcy Act, as amended, that, upon a basis of separate reorganization, the total permissible capitalization of NOTM is $67,000,000.

59. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as the Commission made no finding with respect to the character and the amount of the assets of NOTM which are not productive of earnings.

60. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it is based on the assumption, without any evidence therefor, that "greater future earning will (not) result from the net increase in investment accounts."

61. The Court erred in approving the Plan because the Commission failed to give effect to the amount and character of investments in road and equipment during the trusteeship and particularly since December 31, 1939.

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>
> "In the same period investment of the Missouri Pacific in road and equipment increased $22,322,770, New Orleans by $2,501,098, International by $1,175,822, and the system by $25,999,689. During this period, the system also acquired and entered in its balance sheet accounts as 'investment in affiliated companies—unpledged', the St. Joseph terminal properties, the

purchase price being $3,600,000 plus $999,186 advances to affiliated companies".

63. The Court erred in approving the Plan because it is unfair and inequitable inasmuch as it is based on the finding of the Commission that

> "In our former report we determined a permissible maximum system capitalization of about $560,000,000 as of January 1, 1940. Since that date, according to exhibits filed at the further hearing, there has been an increase in the system investment in road and equipment of nearly $26,000,000 and an increase in accrued depreciation of about $15,000,000, indicating a net increase in investment in road and equipment of about $11,000,000. The investment of the system in affiliated companies as stated by the debtors has, during the same period, increased by about $4,600,000. Adding these sums of $11,000,000 and $4,600,000 to the total given above of $558,326,178 produces $573,926,178. It does not necessarily follow, however, and the record does not show, that greater future earnings will result from this net increase in investment accounts."

64. The Court erred in approving the Plan because it is unfair and inequitable by reason of the fact that it "assumed" the validity of an alleged claim of MOP against NOTM for inter-company advances.

65. The Court erred in approving the Plan because it is unfair and inequitable in permitting the reorganization managers to fix the compensation of those whose services they employ in the execution of their powers.

66. The Court erred in approving the Plan because it is unfair and inequitable in that it discriminates unfairly in favor of other classes of creditors as against the 5¼% Secured Bondholders.

67. The Court erred in approving the Plan because it is unfair and inequitable in that it requires a voting trust of the new stock of the new company.

68. The Court erred in holding that the Commission did not fail to exercise its independent judgment in the

promulgation of the Plan, and in holding that the Commission was not unduly influenced by the fact that the Plan was initiated and presented as a compromise, and in holding that the Commission was not unduly influenced by the fact that a deal was made by private negotiators, i. e., the proponents of the Plan.

69. The Court erred in approving the Plan because of the failure of the Commission to perform its statutory duties independently of private agreements made by the proponents of the Plan.

70. The Court erred in approving the Plan because it is unfair and inequitable in that it contains "escape clauses" which permit future reorganizations out of court, and which are contrary to public policy.

71. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it requires large scale bearish stock market operations by the reorganization managers.

72. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it reposes control of the reorganization process and of the reorganized company in the hands of persons representing only a very minor fraction of interested security holders.

73. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it delegates "full and plenary discretionary power" to the reorganization managers.

74. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it provides for reorganization managers.

75. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it fails to provide that reorganization managers are to be selected by interested security holders.

76. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it provides that the compensation of voting trustees is to be fixed by the reorganization managers.

77. The Court erred in approving the Plan because it is unfair and inequitable in that it provides for the nominations of directors of the new company by persons who are not representative of interested security holders and in that it fails to provide for the nomination of directors of the new company by interested security holders.

78. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it reposes control of the reorganization and of the new company in persons not qualified to exercise such control.

79. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it fails to provide for the selection of reorganization managers or of directors of the new company by vote of interested security holders.

80. The Court erred in ignoring the capitalization as fixed by the Commission.

81. The Court erred in ignoring the stated values ascribed to the securities by the Commission for the purpose of the capitalization of the new company as fixed by the Commission.

82. The Court erred in approving the Plan because the Commission failed to find the value of the new securities allocated to the 5¼% secured bondholders.

[82.] The Court erred in approving the Plan because it was based upon the Commission's finding that proponents of the Plan had entered into a binding agreement to make available to the reorganization managers, within the limits of the Plan, sufficient securities to render the Plan feasible, which finding is contrary to all the evidence both before the Commission and before the Court.

84. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it requires the reorganization managers, in order to attempt to carry out the provisions of the Plan, to depress the market prices of millions of dollars worth of railroad securities.

85. The Court erred in approving the Plan because there was no sufficient evidence submitted to the Commission or to the Court that the execution of the Plan is feasible.

86. The Court erred in approving the Plan because it deprives the 5¼% Secured Bondholders of property without due process of law.

87. The Court erred in approving the Plan because the Commission had failed to take into account the enhanced values of the properties owned by Missouri Pacific and New Orleans, Texas & Mexico Railway as of the time the Plan was considered by the Commission.

88. The Court erred in approving the Plan because it failed to take into account the enhanced values of the properties owned by Missouri Pacific and New Orleans, Texas & Mexico Railway as of the time the Plan was considered by the Court.

89. The Court erred in approving the Plan because it is unfair and inequitable and contrary to public policy in that it fails to provide for the most effective use of cash on hand held by the Debtor companies, which was in excess of all reasonable cash requirements as found by the Commission.

90. The Court erred in holding that it is entitled to authorize the issuance of securities different in character and in amount from that authorized by the Plan as approved by the Commission.

ANDREW W. COMSTOCK,
By WM. H. BIGGS,
His Attorney.

(Memorandum relating to Service of Statements of Points and Designation of Matters to be contained in Transcript.)

All the parties in interest were duly served with the Statement of Points to be Relied Upon on the Appeals of the aforesaid appellants from Orders No. 2604-A and No. 2604-B and also were duly served with the aforesaid appellants' Designations of Record. Copies of these proofs of service are on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

(Order of District Court concerning filing of Claims of Creditors.)

(Filed May 15, 1933.)

(Order No. 19.)

Upon due consideration of the oral motion of Missouri Pacific Railroad Company and all the other Debtors herein, appearing by their counsel, that the Court enter an order determining a reasonable time within which claims and interests of certain classes of creditors of the Debtors, respectively, may be filed or evidenced, and after which no such claims or interest may participate in any plan of reorganization except upon order for cause shown, and determining the manner in which such claims and interests may be filed or evidenced, and it appearing that said motion should be granted, it is Ordered:

(1) That the following classes of claims described in subdivisions (a) to (d), inclusive, of this paragraph are excluded from the scope of this order and will hereafter be provided for by other appropriate orders, to-wit:

(a) Claims evidenced by bonds, funded obligations, or equipment trust certificates, issued under or secured by deeds of trust, trust indentures, mortgages, equipment trust agreements, or pledges of collateral,

including any claims of the respective Trustees thereunder.

(b) Claims of Reconstruction Finance Corporation and of The Railroad Credit Corporation for money borrowed.

(c) Claims on behalf of other carriers or private car owners arising out of rate divisions, interline settlements, per diem accounts, bills for car rentals or mileage made by private cars, car repair bills, switching reclaims, apportionment of reparation awards and of freight earned respecting shipments with transit and storage privileges, and other adjustments of like character between carriers in the conduct of their joint business.

(d) Claims pending before Special Master George C. Hitchcock in the former Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company receivership proceedings.

(2) That the provisions of this order, except as hereinabove otherwise specified, shall apply to: (a) all claims against the Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, and International-Great Northern Railroad Company, Debtors, or their property, accruing prior to April 1, 1933; and to (b) all claims against Missouri Pacific Railroad Corporation in Nebraska; The Beaumont, Sour Lake & Western Railway Company; The St. Louis, Brownsville and Mexico Railway Company; San Antonio, Uvalde & Gulf Railroad Company; and Houston North Shore Railway Company, Debtors, or their property, accruing prior to May 2, 1933; including, without derogation from the generality hereof, claims for personal injuries or death, damage to property, freight claims, overcharge claims, reparation awards, workmen's compensation claims, contingent claims, and other claims of all kinds whatsoever, and whether based on contract, tort, penalties, statutes, or otherwise, and whether liquidated or unliquidated, and whether in suit or reduced to judgment, or otherwise, and also claims

heretofore or hereafter arising out of the disaffirmance by any Debtor of any contract. Interest shall be figured and allowed to the respective dates above specified applicable to the respective Debtors, without prejudice to claim for allowance or readjustment of interest subsequent thereto.

(3) That claims against any of the Debtors may be filed with A. T. Cole, Assistant Secretary of Missouri Pacific Railroad Company, Debtor, Thirteenth Floor, Missouri Pacific Building, Thirteenth and Olive Streets, in the City of St. Louis, Missouri, who is hereby directed immediately to stamp the date of receipt thereon and thereafter, upon appointment of a Special Master herein, to transmit the original claims to him. Each claim so filed with him must be accompanied by a copy thereof for use of the Debtor and must be filed not later than August 31, 1933, except that claims arising out of the Debtor's disaffirmance of a contract after July 31, 1933, may be filed within thirty days after notice of such disaffirmance is given. Each claim shall set forth the name of the Debtor against which the claim is asserted, the name and address of the claimant, the nature of the claim, dates of accrual and the amounts of the various items, with such details as shall definitely advise the Debtor of the particulars thereof, and distinguish the claim from other claims of like nature, and shall state whether suit is pending on such claim, and if so, the name of the court in which pending, also whether judgment has been recovered thereon, and shall describe any security for such claim, partial payments, offsets or counter-claims due the Debtor, and if any lien, priority, or preferential classification is claimed, the facts respecting same shall be fully stated. The Master hereafter to be appointed may, in his discretion, in any instance require any such claims to be made more specific or to be accompanied by bill of particulars. Claims shall be verified by persons having knowledge of the facts.

(4) That claims now or hereafter pending in any court or tribunal of competent [jurisidction] shall be filed in this proceeding as required by subdivision (3) of this order and within the time therein designated, but except as other-

wise herein provided, may be liquidated in the jurisdiction where pending, subject to right of removal or appeal and subject to any stay orders entered in this proceeding.

The following suits now pending or hereafter filed in other jurisdictions are without further order hereby stayed:

(a) Suits begun in other courts subsequent to the time fixed by this order for the filing of claims herein, on claims not timely filed in this proceeding.

(b) Suits, not yet reduced to judgment, pending or hereafter filed in courts respecting whose order or judgments the giving of an appeal bond is a mandatory or jurisdictional prerequisite to an appeal or review.

(5) That objections by the respective Debtors, or other persons having an interest therein, to the allowance of any claims shall be filed within such time and with such particularity as the Master in his discretion may prescribe.

(6) That hearings on claims against such of the Debtors as are operating lines in the State of Texas shall be held at Houston, Texas, and on claims against the other Debtors shall be held at St. Louis, Missouri, unless otherwise agreed to by the parties or ordered by the Court or by the Master in the interest of economy and justice.

(7) That the period herein provided for the filing of claims to which this order is applicable is hereby determined to be a reasonable time for such purpose, and any such claims not filed within the time fixed by this order shall not participate in any plan of reorganization except upon further order of this Court for cause shown.

(8) That a copy of this order shall be promptly published by the Debtors, once during each week for two consecutive weeks, in some publication in which bankruptcy notices are customarily published, in the cities of: St. Louis and Kansas City, Missouri; Omaha, Nebraska; Little Rock, Arkansas; New Orleans, Louisiana; and Houston, Dallas, and San Antonio, Texas. The Debtors shall also mail one

copy of this order to at least one newspaper, if any, published in each county seat through which the lines of the Debtors are operated. Copy of this notice shall likewise be sent or given to the plaintiff or attorney of record in each of the suits now pending against any of the Debtors in other courts.

(9) That the Court further reserves jurisdiction to amplify, extend, limit, abrogate or otherwise modify this order, as the Court may deem proper. Nothing herein contained shall prevent the Debtors from continuing to adjust or liquidate claims pursuant to authority granted by the Court.

C. B. FARIS,
District Judge.

Dated May 13th, 1933.

(Memorandum relating to Order No. 40 of the District Court appointing L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, principal debtor, and of the other intervening debtors.)

On June 22, 1933 the District Court entered Order No. 40. This order appointed L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, principal debtor, and of the other intervening debtors.

(Proof of Claim of Missouri Pacific Railroad Company against New Orleans, Texas & Mexico Railway Company.)

Comstock Exhibit 1.

Group Exhibit 11.

In the
District Court of the United States
Eastern Division, Eastern Judicial
District of Missouri

No. 6935

Claim No. 1553
Received this date
Aug. 29, 1933
A. T. Cole, Assistant Secretary

In the Matter of

Missouri Pacific Railroad Company, Debtor. } In Proceedings for the Reorganization of a Railroad.

(1) Name of the specific debtor company against which claim is filed: * * * *

New Orleans, Texas and Mexico Ry. Co.

(2) Claimant's name and address (if corporation, state where organized, and if partnership, names of the partners)

Missouri Pacific Railroad Company
St. Louis, Mo.

(3) Nature of the claim, dates of accrual, and amounts of the various items (state in such detail as shall definitely advise the debtor of the particulars thereof and distinguish the claims from other claims of like nature)

Cash advances for operation, interest payments, etc. at various times from March, 1929 to February, 1933, both

inclusive, in amount of $10,565,226.78. These advances are evidenced by notes to the extent of $10,355,226.78, as follows:– Note dated April 15, 1932 payable on or before April 15, 1934, with interest at 6%.....$ 400,000.00

Demand Note dated January 27, 1933 with interest at 5½%..... 2,498,500.00

Demand Note dated February 28, 1933 with interest at 5½%..... 7,456,726.78

$10,355,226.78

The two demand notes aggregating $9,955,226.78 are pledged as partial security for loans from the Reconstruction Finance Corporation.

(4) If suit is pending on such claim, state name of court, amount of judgment, if any, and present status.

None.

(5) Describe any security for payment of claim, partial payments, offsets or counter-claims due the debtor, and if any lien, priority, or preferential classification is claimed, the facts respecting same.

None.

(6) Said debtor is justly and truly indebted to this claimant in the sum of $10,565,226.78, by reason of the claim or claims above described.

MISSOURI PACIFIC R. R. CO., Claimant
By F. P. JOHNSON,
Vice-President.

Subscribed and sworn to before me this 28th day of August, 1933.

F. J. C. SATTELL
Notary Public.

My commission expires October 3, 1935.

(Order respecting manner in which protested claims may be evidenced and allowed.)

(Filed September 26, 1934.)

(Order No. 235.)

In the
District Court of the United States
Eastern Division, Eastern Judicial
District of Missouri

No. 6935

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad.

Upon consideration of the Motion of Trustees for an order respecting manner in which protested claims may be evidenced and allowed, the Court being fully advised in the premises, and it appearing that such an order is within the contemplation of Subdivision C-5 of Section 77 of the Act relating to Bankruptcy, It Is by the Court Ordered:

That proofs of claims timely filed under orders in these proceedings may, in the absence of protest on the part of the Trustees or others in interest, be accepted by the Master as prima facie evidence of the claims asserted.

That where, however, any party in interest shall within the time designated by the Master protest in writing the allowance of any such claim, the Master may, in the exercise of his discretion, and shall, on motion of protestant for good cause shown, require the filing of formal pleadings and the introduction of evidence with respect to such claim; and in such event the proof of claim shall be superseded by such pleadings, and neither the proof of claim nor such pleadings shall thereafter constitute any evidence in

support of or adverse to the claim asserted; and the burden of establishing such claim by proof dehors the pleadings shall, in such event, rest upon the claimant.

C. B. FARIS,
United States District Judge.

Dated Sept. 26th, 1934.

	ASSETS
	December 31
INVESTMENTS:	
Investment in Road and Equipment	$ 75,48
Improvements on Leased Railway Property	8
Deposits in Lieu of Mortgaged Property Sold	
Miscellaneous Physical Property	4
Investments in Affiliated Companies - Pledged	3,40
Investments in Affiliated Companies - Unpledged	2,08
Other Investments - Unpledged	2
Total - - -	$ 79,81
CURRENT ASSETS:	
Cash	$ 81
Time Drafts and Deposits	
Special Deposits	16
Loans and Bills Receivable	
Traffic and Car Service Balances Receivable	31
Net Balance Receivable from Agents and Conductors	7
Miscellaneous Accounts Receivable	43
Material and Supplies	9
Interest and Dividends Receivable	9
Other Current Assets	
Total - - -	$ 2,07
DEFERRED ASSETS:	
Working Fund Advances	$
Insurance and Other Funds	1
Other Deferred Assets	3
Total - - -	$ 3
UNADJUSTED DEBITS:	
Rents and Insurance Premiums Paid in Advance	$ 4
Discount on Funded Debt	
Other Unadjusted Debits	7
Total - - -	$ 8
SECURITIES ISSUED OR ASSUMED:	
Unpledged - 1934	$ 130,000.00
1931	2,030,000.00
SECURITIES ISSUED OR ASSUMED:	
Pledged - 1934	$1,900,000.00
1931	None
Grand Total - - -	$ 85,4

NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY AND CONTROLLED COMPANIES
(Except I-GN RR Co.)

Consolidated General Balance as of December 31, 1934, Compared with August 31, 1931

ASSETS

	December 31,1934	August 31,1931	Increase	Decrease
	$ 75,485,381.18	$ 75,239,179.69		
	22,144.30	84,621.34		$ 1,816,275.57
	3,183.31		$ 3,183.31	
	488,148.81	446,873.23	41,274.58	
	3,403,485.57	263,000.00	3,140,485.57	
	2,085,111.96	4,698,723.72		2,613,611.76
	93,974.88	13,133.32	81,841.66	
	$ 79,516,431.09	$ 80,680,530.30		$ 1,363,119.21
	$ 319,890.86	$ 978,613.75		$ 658,023.19
		10,000.00		10,000.00
	164,541.93	71,640.00	$ 92,901.93	
	9,014.52	41,077.12		32,062.60
	317,381.88	187,897.74	129,484.14	
	77,497.23	156,269.45		78,772.22
	639,151.40	1,681,094.67		1,041,973.27
	986,397.74	1,320,425.08		334,035.34
	93,706.85	80,212.50	13,494.35	
	1,474.71	3,114.72		1,640.01
	$ 2,610,666.62	$ 4,930,345.05		$ 1,699,696.21
	$ 7,081.42	$ 7,663.22		$ 571.80
	13,994.21	13,249.13	$ 745.78	
	370,475.87	37,731.87	242,744.00	
	$ 393,812.20	$ 58,644.22	$ 243,917.98	
	$ 41,480.87	$ 20,546.01	$ 20,874.86	
		182.80		$ 182.80
	799,295.87	2,113,260.30		1,313,566.03
	$ 840,776.14	$ 2,133,989.11		$ 1,292,692.97
000.00				
000.00				
000.00				
	$ 85,463,346.25	$ 87,846,096.36		$ 4,101,740.11

LIABILITIES

	December 31,1934	August 31
STOCKS:		
Capital Stock - Common	$ 15,000,000.00	$ 15,000
LONG TERM DEBT:		
Funded Debt Unmatured	$ 46,378,000.00	$ 47,258
Less Portion Held by or for Company	2,080,000.00	2,080
	$ 44,348,000.00	$ 45,178
Non-negotiable Debt to Affiliated Companies	10,563,236.76	6,889
Total - - -	$ 54,911,236.76	$ 52,068
CURRENT LIABILITIES:		
Traffic and Car Service Balances Payable	$ 267,219.19	$ 138
Audited Accounts and Wages Payable	1,037,379.90	2,473
Miscellaneous Accounts Payable	151,078.28	31
Interest Matured Unpaid	3,935,184.50	33
Dividends Matured Unpaid	16,119.00	1
Funded Debt Matured Unpaid	1,000.00	1
Unmatured Interest Accrued	1,795,480.85	1,089
Other Current Liabilities	12,200.40	2
Total - - -	$ 7,196,618.98	$ 3,769
DEFERRED LIABILITIES:		
Liability for Provident Funds	$ 15,994.91	$ 2
Other Deferred Liabilities	26,618.41	611
Total - - -	$ 42,613.32	$ 613
UNADJUSTED CREDITS:		
Tax Liability	$ 544,288.08	$ 783
Insurance and Casualty Reserves		25
Accrued Depreciation - Equipment	5,789,902.87	5,689
Accrued Depreciation - Miscellaneous Physical Property	8,182.85	7
Other Unadjusted Credits	548,731.49	1,41
Total - - -	$ 6,871,099.05	$ 7,91
CORPORATE SURPLUS:		
Additions to Property Through Income and Surplus	$ 2,491,511.40	$ 2,391
Appropriated Surplus not Specifically Invested	155,000.00	5
Profit and Loss	Dr 3,203,783.80	5,589
Total - - -	Dr 557,311.80	$ 7,977
Grand Total - - -	$ 85,463,346.25	$ 87,846

Certified Correct:

M. Eckert

General Auditor

Exhibit 117.

...D COMPANIES

...th August 31,1931

LIABILITIES

	December 31,1934	August 31,1931	Increase	Decrease
...on	$ 15,000,000.00	$ 15,000,000.00		
...ed	$ 46,376,000.00	$ 47,226,000.00		$ 850,000.00
...or for Company	2,030,000.00	2,030,000.00		
	$ 44,346,000.00	$ 45,196,000.00		$ 850,000.00
...to Affiliated Companies	10,565,226.76	6,857,223.84	$ 3,708,002.94	
... - - -	$ 54,911,226.76	$ 52,053,223.84	$ 3,858,002.94	
...ice Balances Payable	$ 247,219.19	$ 136,021.05	$ 109,198.14	
... Wages Payable	1,037,379.90	2,475,578.50		$ 1,438,198.60
...ts Payable	151,076.29	39,821.69	111,254.60	
...aid	5,935,184.50	32,390.00	5,902,794.50	
...paid	16,119.00	1,647.50	14,471.50	
... Unpaid	1,000.00	1,000.00		
...ccrued	1,796,420.85	1,067,641.41	727,709.14	
...ities	12,209.49	39,330.25		27,120.76
... - - -	$ 7,196,618.92	$ 3,784,430.40	$ 3,411,188.38	
...ent Funds	$ 15,994.91	$ 26,059.44		$ 10,064.53
...ilities	26,618.41	811,387.86		784,709.45
... - - -	$ 42,613.32	$ 837,387.30		$ 794,773.98
...	$ 544,282.02	$ 763,976.17		$ 219,694.15
...by Reserves		29,356.06		29,356.06
... - Equipment	5,769,902.67	5,686,459.05	$ 83,443.62	
... - Miscellaneous Physical Property	8,182.85	7,883.68	299.97	
...ents	548,731.49	1,414,610.06		865,878.57
... - - -	$ 6,871,099.03	$ 7,911,284.22		$ 1,040,185.19
...y Through Income and Surplus	$ 2,491,211.40	$ 2,381,387.42	$ 110,123.98	
... not Specifically Invested	155,000.00	5,248.35	149,751.65	
...	Dr 3,203,723.20	5,592,144.83		$ 8,795,868.03
... - - -	Dr 557,511.80	$ 7,978,780.60		$ 8,535,992.40
Grand Total - - -	$ 83,463,346.25	$ 87,565,086.36		$ 4,101,740.11

MISSOURI PACIFIC SYSTEM
Proposed Reorganization as of January 1, 1936
Finance Docket No. 9918

Exhibit 276
701-A
Witness

Advances by Missouri Pacific Railroad Company to New Orleans, Texas & Mexico Railway Company
(Interest calculated at 6% to February 1, 1930; 5% to April 1, 1932; 6% to December 31, 1932; 5½% thereafter. 360 day basis to April 30, 1932; 365 day basis thereafter)

Date	Advances Made	Advances Repaid	Balance Due	Date	Interest Charged	Interest Paid	Balance Due
November 30, 1928	$ 300,000		$ 300,000	November 30, 1928	$ 50	$	$ 50
December 31, 1928	100,000		400,000	December 31, 1928	1,567		1,617
January 31, 1929	150,000		550,000	January 31, 1929	2,092		3,708
February 28, 1929	250,000		800,000	February 28, 1929	2,608		6,317
March 31, 1929	500,000		1,300,000	March 31, 1929	4,217		10,533
July 31, 1929	125,000		1,425,000	April - July, 1929	26,454		36,988
August 31, 1929	275,000		1,700,000	August 31, 1929	7,408		44,396
September 30, 1929	850,000		2,550,000	September 30, 1929	8,642		53,038
October 31, 1929	150,000		2,700,000	October 31, 1929	13,200		66,238
November 29, 1929	310,000		3,010,000	November 30, 1929	13,603		79,841
January 30, 1930	100,000		3,110,000	December, 1929 - January, 1930	31,137		110,977
February 28, 1930	260,000		3,370,000	February 28, 1930	12,131		123,108
March 31, 1930	430,000		3,800,000	March 31, 1930	14,569		137,677
May 31, 1930	275,000		4,075,000	April - May, 1930	32,233		169,910
June 4, 1930		500,000	3,575,000	June 30, 1930	15,174		185,084
September 29, 1930	550,000		4,125,000	July - September, 1930	45,833		230,917
November 29, 1930	300,000		4,425,000	October - November, 1930	35,031		265,948
December 31, 1930	50,000		4,475,000	December 31, 1930	19,059		285,007
January 31, 1931	247,750		4,722,750	January 31, 1931	19,302		304,309
February 25, 1931	75,000		4,797,750	February 28, 1931	18,408		322,717
March 31, 1931	925,000		5,722,750	March 31, 1931	20,785		343,502
				April 30, 1931	23,845	249,917	117,431
May 27, 1931	200,000		5,922,750	May 31, 1931	24,779		142,209
				June - July, 1931	50,179		192,388
August 27, 1931		7,612	5,915,138	August 27, 1931		192,388	
August 29, 1931	250,000		6,165,138	August 31, 1931	25,600		25,600
September 30, 1931	850,000		7,015,138	September 30, 1931	25,806		51,406
October 19, 1931		23,594	6,991,544	October 19, 1931		51,406	
October 31, 1931	125,000		7,116,544	October 31, 1931	30,179		30,179
November 27, 1931	300,000		7,416,544	November 30, 1931	29,819		59,998
December 28, 1931		40,002	7,376,541	December 28, 1931		59,998	
December 30, 1931	75,000		7,451,541	December 31, 1931	31,931		31,931
January 28, 1932	200,000		7,651,541	January 31, 1932	32,194		64,125
February 27, 1932		460,875	7,190,666	February 27, 1932		64,125	
				February 29, 1932	30,627		30,627
April 1, 1932	925,000		8,115,666	March 31, 1932	30,960		61,586
April 20, 1932	100,000		8,215,666	April 30, 1932	40,557		102,144
				May - July, 1932	124,248	100,000	126,392
August 1, 1932		60,000	8,155,666				
August 5, 1932	60,000		8,215,666				
August 26, 1932		56,828	8,158,838				
						168,171	41,780 Cr
				August 31, 1932	41,780		
October 1, 1932	800,000		8,958,838	September 30, 1932	[illegible]		[illegible]

				August 31, 1932	41,780		
October 1, 1932	800,000		8,958,838	September 30, 1932	40,235		40,235
October 31, 1932	1,261,010		10,219,848	October 31, 1932	45,522		85,757
November 28, 1932	35,000		10,254,848	November 30, 1932	50,411		136,168
December 30, 1932	79,000		10,333,848	December 31, 1932	52,271		188,438
January 3, 1933		79,000	10,254,848	January 31, 1933	51,622		240,060
February 1, 1933	210,000		10,464,848	February 28, 1933	44,368		284,428
				March 29, 1933		175,000	109,428
Plus Special Advance for Miscellaneous Physical Property				March 31, 1933	49,445		158,872
March, 1929	109,179						
March, 1931 - Repayment	Cr 8,800		100,379				
Total Due March 31, 1933			10,565,227				158,872
Interest at 5½% per annum April 1, 1933 to December 31, 1934 on			10,565,227		1,022,400		1,022,400
Interest at 5½% per annum Year 1935 on			10,565,227		581,087		581,087
Total due December 31, 1935:							1,762,360
Principal		10,565,227					
Interest prior to April 1, 1933	158,872						
" subsequent to "	1,603,488	1,762,360					
		12,327,587					

Source - Company Records

July 31, 1935

Excerpts from Transcript of Testimony Taken at the Hearing Before the Interstate Commerce Commission on February 7, 1936, in Proceedings Entitled "In the Matter of Missouri Pacific Railroad Company, Debtor".

Q. (By Mr. Ballard) Now, the Missouri Pacific debt.
A. I have—

Director Sweet: By Missouri Pacific debt, you mean debt from the New Orleans, Texas & Mexico?
A. Yes.

Mr. Ballard: The next item on exhibit A of the plan.
A. I have exhibit, company No. 74-A, Commission No. 226, which details the amounts shown on line 73 of exhibit A of the plan, covering the New Orleans, Texas & Mexico debt to the Missouri Pacific, and also detailing the interest due as of December 31, 1935.

(Debtors' Exhibit No. 226, Witness Wyer, was received in evidence.)

The Witness: This exhibit shows the date that each advance was made and the amount, shows the dates of repayment and shows the interest charged over the entire period from the date of the first advance, which was November 30, 1928.

Director Sweet: Can you state generally what these advances were made for?
A. Yes. One of these exhibits which I will come on, our No. 74-F, shows just exactly what they were made for, and I can bring that in right now if you would like to know. I might bring that in out of order, if you wish.

Director Sweet: We can wait until you get to it.

The Witness: All right. The next set of exhibits is all bound together and includes company No. 74-B to 74-F, inclusive.

Mr. Ballard: And those are the notes and resolutions with respect to interest rate, are they not?
A. Together with the analysis of the advances which I just mentioned. That would be Commission No. 227.

Mr. Ballard: 74-A to 74-F, inclusive?

A. That is B to F, inclusive.

Q. B to F, that is right.

(Debtors exhibits Nos. 227, Witness Wyer, was received in evidence.)

The Witness: This exhibit comprises seven pages, and in the set I am handing to the reporter there is a certified copy of this resolution. There are three notes evidencing this indebtedness:

$400,000 note dated April 15, 1932. That is the notes under which the $1,900,000 of first mortgage bonds are pledged, and it was in accordance with authority given in this note that they were repledged with the Reconstruction Finance Corporation for the short term loans from the R. F. C. to the Missouri Pacific.

The second note was dated January 27, 1933, for $2,498,500, and the third note was dated February 28, 1933, for $7,456,726.78, and those two latter notes were also pledged with the Reconstruction Finance Corporation by the Missouri Pacific.

* * * * * * *

Director Sweet: This exhibit 226 appears to indicate a total in advances of $10,565,000.

A. Yes, that is correct.

Director Sweet: Remaining due on the 31st of March, 1933? A. Yes.

Director Sweet: How much of that amount, if any, is evidenced now by notes? A. All of it.

Q. All of it? A. Yes, sir; these three notes.

Q. Covering the whole thing?

A. Covering the whole thing, yes.

Q. Now, did those notes require 20-A authority?

A. Yes; the third note required 20-A authority. The second note was issued in the exact amount that the New Orleans, Texas & Mexico could issue a note without 20-A authority, and at the same time application was made for 20-A authority to issue the note for the balance. That was granted, and the third note, dated February 28, 1933, was the note which was issued under 20-A authority.

Q. Was that in connection with a Reconstruction Finance Corporation loan, or was it an independent application under 20-A?

A. We made an independent application under 20-A for that note and for another note of the International-Great Northern.

* * * * * * *

Petition of

George H. Walker, Alex Berger, Willard V. King, B. A. Tompkins and George E. Warren, as a Committee Representing Holders of First Mortgage Bonds and Income Mortgage Bonds of New Orleans, Texas & Mexico Railway Company for the Appointment of a Separate Trustee for New Orleans, Texas & Mexico Railway Company and Its Subsidiaries The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company.

(Filed March 23, 1937.)

([Peition] No. 756a.)

To the Honorable the Judges of the United States District Court for the Eastern District of Missouri, Eastern Division:

The Petition of George H. Walker, Alex Berger, Willard V. King, B. A. Tompkins and George E. Warren, as a committee representing holders of First Mortgage Bonds and Income Mortgage Bonds of New Orleans, Texas & Mexico Railway Company, respectfully shows as follows:

1. Petitioners George H. Walker, Alex Berger, Willard V. King, B. A. Tompkins and George E. Warren were constituted as a committee to represent holders of First Mortgage Bonds, Series A, B, C and D, and of 5% Non-Cumulative Income Mortgage Bonds, Series A, of New Orleans, Texas & Mexico Railway Company under and

pursuant to the terms of a Deposit Agreement dated April 25, 1933. A copy of said Deposit Agreement was annexed as Schedule A to Petitioners' Petition, verified October 28, 1936, for Leave to Intervene in the Proceedings Herein. George H. Walker and George E. Warren are the Chairman and Vice-Chairman of said Committee, respectively. Of the individuals constituting said committee (hereinafter collectively referred to as the Committee) George H. Walker is a resident of the City of Kennebunkport, State and District, Southern Division of Maine; Willard V. King and B. A. Tompkins are residents of the City, State and Southern District of New York; Alex Berger is a resident of the City of Howison, State and Eastern District of Virginia; and George E. Warren is a resident of the City of Stamford, State and District of Connecticut. Said Committee represents $9,579,100 principal amount out of $40,615,900 of said First Mortgage Bonds outstanding in the hands of the public (excluding $1,900,000 of said First Mortgage Bonds alleged to be pledged with Missouri Pacific Railroad Company) and $374,400 principal amount of Non-Cumulative Income Mortgage Bonds out of $2,354,100 of said Income Mortgage Bonds outstanding in the hands of the public.

2. New Orleans, Texas & Mexico Railway Company is, and at all times hereinafter mentioned was, a railroad corporation duly organized and existing under the laws of the State of Louisiana. On information and belief approximately ninety-four per cent. (94%) of the capital stock of New Orleans, Texas & Mexico Railway Company is owned by Missouri Pacific Railroad Company.

3. The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company are, and at all times hereinafter mentioned were, railroad corporations duly organized and existing under the laws of the State of Texas. The entire capital stock together with all of the bonded indebtedness of each such company is owned by New Orleans, Texas & Mexico Railway Company and is deposited with Irving Trust Company, as Trustee under

the First Mortgage of New Orleans, Texas & Mexico Railway Company.

4. Missouri Pacific Railroad Company is, and at all the times hereinafter mentioned was, a railroad corporation duly organized and existing under the laws of the State of Missouri.

5. International-Great Northern Railroad Company is, and at all the times hereinafter mentioned was, a railroad corporation duly organized and existing under the laws of the State of Texas. The entire capital stock of said International-Great Northern Railroad Company is owned by New Orleans, Texas & Mexico Railway Company.

6. Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company and International-Great Northern Railroad Company each filed herein on or about March 31, 1933, a petition seeking to reorganize under Section 77 of the Federal Bankruptcy Act, as amended. The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company each filed herein on or about May 1, 1933, a petition seeking to reorganize under Section 77 of the Federal Bankruptcy Act, as amended. Said Railroad Companies were continued as debtors in possession of their respective properties until June 22, 1933.

7. Guy A. Thompson and L. W. Baldwin were, by order of the Court herein, appointed Co-Trustees of the properties of Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, International-Great Northern Railroad Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, San Antonio, Uvalde & Gulf Railroad Company and Houston North Shore Railway Company on June 22, 1933; and were appointed permanent Co-Trustees thereof on July 25, 1933. L. W. Baldwin resigned as such Co-Trustee on December 26, 1935; and Guy A. Thompson was thereupon appointed

sole Trustee of the properties of each of said Railroad Companies and is at the present time such Trustee.

8. Missouri Pacific Railroad Company acquired control of the properties of New Orleans, Texas & Mexico Railway Company, with the consent of the Interstate Commerce Commission, by the acquisition of a majority of the outstanding capital stock of said New Orleans, Texas & Mexico Railway Company on or about January 1, 1925. After the acquisition of such control, the properties of International-Great Northern Railroad Company and of New Orleans, Texas & Mexico Railway Company and its subsidiaries*, the majority stock of which it then owned or thereafter acquired, were operated by Missouri Pacific Railroad Company. After such acquisition of control the majority of the Directors and chief operating officers of said Missouri Pacific Railroad Company were also Directors and chief operating officers of International-Great Northern Railroad Company and of New Orleans, Texas & Mexico Railway Company and its principal subsidiaries.

9. On information and belief the properties of New Orleans, Texas & Mexico Railway Company and its subsidiaries have been operated by Missouri Pacific Railroad Company for the benefit of Missouri Pacific Railroad Company and International-Great Northern Railroad Company and to the detriment and loss of New Orleans, Texas & Mexico Railway Company and its subsidiaries and its security holders.

10. On information and belief Missouri Pacific Railroad Company, beginning about September 1, 1929 and continuing until March 31, 1933, the date of the filing herein of said petitions under Section 77 of the Federal Bankruptcy Act, established and maintained a so-called frozen per diem plan or arrangement for the allocation as between itself, International-Great Northern Railroad Company and New Orleans, Texas & Mexico Railway Company and its subsidiaries of rentals for the use of freight cars; and, pursuant to said frozen pier diem plan, wrongfully

* The term "subsidiary" or "subsidiaries" of New Orleans, Texas & Mexico Railway Company as used herein does not include International-Great Northern Railroad Company.

required New Orleans, Texas & Mexico Railway Company and its subsidiaries to pay to it and to International-Great Northern Railway Company amounts of rentals for use of freight cars of Missouri Pacific Railroad Company and International-Great Northern Railroad Company exceeding by an amount averaging not less than $235,000 per annum the amount which New Orleans, Texas & Mexico Railway Company and its subsidiaries should have been required to pay. On information and belief said overcharges were paid to Missouri Pacific Railroad Company and to International-Great Northern Railroad Company by New Orleans, Texas & Mexico Railway Company and its subsidiaries.

11. Upon demand of Petitioner Committee, and in recognition of the unfairness and inequity of the frozen per diem plan, a study of freight car rentals as between the estates of Missouri Pacific Railroad Company, International-Great Northern Railroad Company and New Orleans, Texas & Mexico Railway Company and its subsidiaries was caused to be made by Guy A. Thompson, as sole Trustee aforesaid, for the year ended June 30, 1936, and said overcharges for rentals of freight cars were thereafter reduced by approximately $130,000 per year, effective July 1, 1936. On information and belief, said charges for rentals of freight cars are still excessive and the estates of New Orleans, Texas & Mexico Railway Company and its subsidiaries are still being required to pay charges exceeding by at least $100,000 per year the amount which such estates should be required to pay. Although demand has been made by Petitioner Committee upon Guy A. Thompson, as sole Trustee, to put into effect a fair car rental arrangement and to pay to the estates of New Orleans, Texas & Mexico Railway Company and its subsidiaries the amount of the overcharges collected since March 31, 1933, he has wrongfully refused and continues to refuse both to put into effect a fair arrangement for payment of car rentals and has wrongfully refused and continues to refuse to make whole the estates of New Orleans, Texas & Mexico Railway Company and its subsidiaries in respect of overcharges collected from it since March 31, 1933.

12. On information and belief, Missouri Pacific Railroad Company, beginning in 1925 and continuing to March 31, 1933, wrongfully diverted or caused to be diverted from the lines of railroad of New Orleans, Texas & Mexico Railway Company and its subsidiaries to the lines of railroad of International-Great Northern Railroad Company and/or Missouri Pacific Railroad Company substantial amounts of traffic originating on lines of railroad of said New Orleans, Texas & Mexico Railway Company and its subsidiaries. Said traffic so diverted could and should have been moved over the lines of railroad of New Orleans, Texas & Mexico Railway Company and its subsidiaries. On information and belief such wrongful diversions of traffic resulted in losses to New Orleans, Texas & Mexico Railway Company and its subsidiaries exceeding in amount on the average one hundred thousand dollars per year.

13. On information and belief such wrongful diversions of traffic were continued and losses in excess of such amount were continued to be incurred by the estates of New Orleans, Texas & Mexico Railway Company and its subsidiaries during the period after the filing on March 31, 1933, as aforesaid, of said petitions under Section 77 of the Federal Bankruptcy Act, as amended, to the date of the appointment of Guy A. Thompson and L. W. Baldwin as Co-Trustees on June 22, 1933, as aforesaid; and thereafter to the date of the appointment on December 26, 1935 of Guy A. Thompson, as sole Trustee, as aforesaid; and thereafter until the present time, except that, upon demand of the Petitioner Committee, certain of the traffic originating on the lines of railroad of Houston & Brazos Valley Railway Company, a wholly owned subsidiary of New Orleans, Texas & Mexico Railway Company, was restored on or about August 1, 1936, to the lines of railroad of the estate of New Orleans, Texas & Mexico Railway Company and its subsidiary The St. Louis, Brownsville and Mexico Railway Company. There is now pending in these proceedings a petition, verified January 5, 1937, of The Equitable Trust Company of New York, as Trustee under the First Mortgage of International-Great Northern Railroad Company, for an order directing that Guy A.

Thompson, as Trustee of International-Great Northern Railroad Company, cause said Houston & Brazos Valley traffic again to be diverted from the lines of railroad of the estate of New Orleans, Texas & Mexico Railway Company and its subsidiary The St. Louis, Brownsville & Mexico Railway Company to the lines of railroad of the estate of International-Great Northern Railroad Company.

14. On information and belief Guy A. Thompson, as such sole Trustee, continues wrongfully to divert or cause to be diverted other valuable and profitable traffic properly belonging to the lines of railroad of the estate of New Orleans, Texas & Mexico Railway Company and its subsidiaries to the lines of railroad of the estates of International-Great Northern Railroad Company and Missouri Pacific Railroad Company, to the great loss of the estates of New Orleans, Texas & Mexico Railway Company and its subsidiaries and to the security holders of New Orleans, Texas & Mexico Railway Company.

15. On information and belief Missouri Pacific Railroad Company, beginning on or about the year 1926 and continuing until March 31, 1933, for the benefit of International-Great Northern Railroad Company wrongfully caused to be charged against, and wrongfully required to be paid by, New Orleans, Texas & Mexico Railway Company and its subsidiaries, in respect of joint general expenses, joint traffic expenses, and other joint expenses, amounts in excess of the amounts properly chargeable against, and payable by, said New Orleans, Texas & Mexico Railway Company and its subsidiaries. On information and belief such overcharges so required to be paid, and which were paid by New Orleans, Texas & Mexico Railway Company and its subsidiaries to Missouri Pacific Railroad Company and to International-Great Northern Railroad Company, exceeded an average of $125,000 per year.

16. On information and belief the payment of overcharges in respect of joint general, traffic and other expenses to the estates of Missouri Pacific Railroad Company and International-Great Northern Railroad Com-

pany were wrongfully continued to be exacted from, and to be paid by the estates of New Orleans, Texas & Mexico Railway Company and its subsidiaries between March 31, 1933, the date of the filing of said petitions under Section 77 of the Federal Bankruptcy Act, as amended, and June 22, 1933, the date of the appointment of Guy A. Thompson and L. W. Baldwin, as Co-Trustees as aforesaid, and thereafter by said Co-Trustees to December 26, 1935; and thereafter by Guy A. Thompson as sole Trustee as aforesaid, to the date hereof. All demands of Petitioner Committee that said wrongful practice of exacting such or any excessive amounts from the estates of New Orleans, Texas & Mexico Railway Company and its subsidiaries be discontinued and that reimbursement for overcharges exacted since March 31, 1933, be made to said estate have been refused by Guy A. Thompson as said sole Trustee.

17. On information and belief Missouri Pacific Railroad Company caused New Orleans, Texas & Mexico Railway Company or its wholly owned subsidiary, The St. Louis, Brownsville and Mexico Railway Company, to acquire at various times and from time to time certain new equipment consisting of new locomotives, for the benefit of Missouri Pacific Railroad Company and International-Great Northern Railroad Company, and has caused New Orleans, Texas & Mexico Railway Company or its said subsidiary to pay, when and as due, the instalments of principal and dividends of equipment trust certificates issued in respect thereof. On information and belief said equipment, although acquired by New Orleans, Texas & Mexico Railway Company or its said subsidiary, was not suitable for use, and was never intended to be used, on the lines of railroad of said New Orleans, Texas & Mexico Railway Company or its said subsidiary, but was acquired for use, and since acquisition has been used, on the lines of railroad of Missouri Pacific Railroad Company and International-Great Northern Railroad Company. On information and belief Missouri Pacific Railroad Company delivered or caused to be delivered to New Orleans, Texas & Mexico Railway Company or its said subsidiary, The St. Louis, Brownsville and Mexico Railway Company in

exchange for said new locomotives certain old locomotives (being locomotives of an average age in excess of twenty years) of Missouri Pacific Railroad Company and International-Great Northern Railroad Company which said old locomotives have since been used on the lines of railroad of New Orleans, Texas & Mexico Railway Company or its said subsidiary or subsidiaries. On information and belief the cost of operating such old locomotives greatly exceeded the cost which would have been incurred by the New Orleans, Texas & Mexico Railway Company and its said subsidiaries had it been allowed and permitted to acquire and use new locomotives of the type which could have been used by it and its said subsidiaries. On information and belief such excess cost of operating said old locomotives has aggregated at least an average of $150,000 per year.

18. On information and belief the estate of New Orleans, Texas & Mexico Railway Company or its subsidiary The St. Louis, Brownsville and Mexico Railway Company, were required to continue to pay the instalments of principal and dividends on the Equipment Trust Certificates issued in respect of said locomotives, and to continue to use said old locomotives and to incur said excess cost after the filing of said petitions under said Section 77 to the date of the appointment on June 22, 1933, of Guy A. Thompson and L. W. Baldwin, as Co-Trustees as aforesaid, and thereafter to the date of the appointment on December 26, 1935, of Guy A. Thompson, as sole Trustee as aforesaid; and thereafter to the date hereof, all to the detriment of the estate of New Orleans, Texas & Mexico Railway Company and its security holders.

19. On information and belief Missouri Pacific Railroad Company and its Trustees or Trustee by divers other means and methods, including improper accounting methods, have deprived and taken from New Orleans, Texas & Mexico Railway Company substantial amounts of moneys, to the detriment of New Orleans, Texas & Mexico Railway Company, its estate, and security holders.

20. On information and belief Missouri Pacific Railroad Company has asserted a claim against the estate of New

Orleans, Texas & Mexico Railway Company in an amount, together with interest, exceeding $12,000,000 for moneys alleged to have been advanced by Missouri Pacific Railroad Company to New Orleans, Texas & Mexico Railway Company. Said alleged advances are claimed to be secured by the pledge with Missouri Pacific Railroad Company of $1,900,000, principal amount, of First Mortgage Bonds of New Orleans, Texas & Mexico Railway Company. On information and belief said advances, if made, would not have been required, had the properties of New Orleans, Texas & Mexico Railway Company been operated, as they should have been, in the interest of said New Orleans, Texas & Mexico Railway Company and its security holders instead of being operated, as they were, in the interest of Missouri Pacific Railroad Company and International-Great Northern Railroad Company, and had the accounts of Missouri Pacific Railroad Company, International-Great Northern Railroad Company, and New Orleans, Texas & Mexico Railway Company and its subsidiaries been accurately and properly kept.

21. On information and belief, by reason of the foregoing wrongful acts, deeds and accounting, Missouri Pacific Railroad Company and International-Great Northern Railroad Company are indebted to New Orleans, Texas & Mexico Railway Company in an amount greatly in excess of any amount or amounts owing to said Railroad Companies or either of them by New Orleans, Texas & Mexico Railway Company.

22. On information and belief, by reason of the foregoing wrongful acts, deeds and accounting, Missouri Pacific Railroad Company, as Debtor in possession of its properties between March 31, 1933 and June 22, 1933, International-Great Northern Railroad Company, as Debtor in possession of its properties between March 31, 1933 and June 22, 1933, Guy A. Thompson and L. W. Baldwin, as Co-Trustees of Missouri Pacific Railroad Company and of International-Great Northern Railroad Company between June 22, 1933 and December 26, 1935, and Guy A. Thompson, as sole Trustee of Missouri Pacific Railroad Company and of International-Great North-

ern Railroad Company since December 26, 1935, are indebted to the estate of New Orleans, Texas & Mexico Railway Company in an amount in excess of $2,000,000.

23. On information and belief the properties of the Railroad Companies, which are parties to the proceedings herein, have been operated as if there were a union of the rights and interests of the creditors thereof. It is the duty of the Trustee of New Orleans, Texas & Mexico Railway Company and its subsidiaries, The St. Louis, Brownsville and Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railroad Company, to operate the properties of said Companies primarily in the interests of the creditors of said Companies. Similarly it is the duty of the Trustee of International-Great Northern Railroad Company to operate the properties of that Company primarily in the interests of the creditors thereof. Similarly it is the duty of the Trustee of Missouri Pacific Railroad Company to operate the properties of that Company primarily in the interests of its creditors. The rights and interests of the creditors, security holders and estates of Missouri Pacific Railroad Company and International-Great Northern Railroad Company, respectively, are adverse to and in conflict with the rights and interests of the creditors, security holders and estate of New Orleans, Texas & Mexico Railway Company and its subsidiaries, The St. Louis, Brownsville and Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railroad Company, such rights and interests of New Orleans, Texas & Mexico Railway Company and its said subsidiaries being identical. The proper protection of the rights and interests of the creditors, security holders and estates of said Railroad Companies requires that the Trustees of the properties thereof deal with each other at arms length. The nature of said adverse and conflicting rights and interests between the creditors, security holders and estates of Missouri Pacific Railroad Company and International-Great Northern Railroad Company on the one hand and creditors, security

holders and estate of New Orleans, Texas & Mexico Railway Company on the other hand make it impossible for the same man to serve as Trustee of the properties of all of said Companies with justice and fairness to himself and to said conflicting interests. The performance of the duties of Trustee of all of said Companies may involve a proceeding for an accounting by him in one capacity against himself in another capacity. The situation involved in the proceedings herein imposes an unfair burden on Guy A. Thompson as sole Trustee of the Railroad Companies which are parties to the proceedings herein and make it necessary that a separate trustee be appointed for the properties of New Orleans, Texas & Mexico Railway Company and its said subsidiaries, The St. Louis, Brownsville and Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company. Petitioners believe that Mr. Thompson has attempted to be fair and just to all interests in the performance of his services as sole Trustee. However, the adverse and conflicting rights and interests inherent in the presently existing situation make it impossible for Mr. Thompson or any other man to perform the duties required of a trustee under Section 77 with justice to himself and to all the interests involved. The unfairness of the presently existing situation to Mr. Thompson and to the creditors and security holders of the Railroad Companies which are parties to these proceedings and particularly of New Orleans, Texas & Mexico Railway Company and its subsidiaries aforesaid can be removed only by the appointment of a separate trustee for New Orleans, Texas & Mexico Railway Company and its said subsidiaries, The St. Louis, Brownsville and Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company. The appointment of such separate trustee will not only relieve Mr. Thompson of the unfair burden now imposed upon him but will permit the operation of the properties of New Orleans, Texas & Mexico Railway Company and its said subsidiaries in the interest of the creditors thereof and to the better advantage of said creditors.

Wherefore petitioners pray

(a) that the Court appoint a separate trustee for the properties of New Orleans, Texas & Mexico Railway Company and its subsidiaries, The St. Louis, Brownsville and Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company, with full power, subject to the control of this Court and to the lawful regulations of the Interstate Commerce Commission, to operate said properties in the interest of the creditors of said companies, and independent of the Trustee or Trustees of the properties of Missouri Pacific Railroad Company and International-Great Northern Railroad Company; and

(b) for such other and further relief and different relief as to the Court shall seem just and proper.

Dated March 6, 1937.

GEORGE H. WALKER, ALEX BERGER, WILLARD V. KING, B. A. TOMPKINS and GEORGE E. WARREN, as a Committee representing holders of First Mortgage Bonds and Income Mortgage Bonds of New Orleans, Texas & Mexico Railway Company,

by GEORGE H. WALKER,
Chairman.

T. M. PIERCE,
E. T. MILLER,
Boatmen's Bank Building,
St. Louis, Missouri,

CRAVATH, de GERSDORFF, SWAINE & WOOD,
15 Broad Street,
New York, N. Y.,

Solicitors.

State of New York,
County of New York, } ss.:

George H. Walker, being duly sworn, deposes and says that he is Chairman of the Committee representing the First Mortgage Bonds and Income Mortgage Bonds of New Orleans, Texas & Mexico Railway Company; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be upon information and belief and as to those matters he believes it to be true.

GEORGE H. WALKER.

Subscribed and sworn to before me this 6th day of March, 1937.

ARTHUR NEWMAN,
(Seal) Notary Public.

My commission expires March 30, 1937.

Arthur Newman
Notary Public, Kings County
Kings Co. Clerk's No. 157 Reg. No. 7064
N. Y. Co. Clerk's No. 1, Reg. No. 7N83
Bronx Co. Clerk's No. 8, Reg. No. 36N37
Queens Co. Clerk's No. 1679, Reg. No. 6693
Certificates filed also in
Richmond and Westchester Counties
Commission expires March 30, 1937

Petition of Irving Trust Company, as Trustee Under First Mortgage of New Orleans, Texas & Mexico Railway Company, for the Appointment of a Separate Trustee for New Orleans, Texas & Mexico Railway Company and Certain Subsidiaries.

(Filed March 23, 1937.)

(Petition No. 757.)

To the Honorable the Judges of the United States District Court for the Eastern District of Missouri, Eastern Division:

The petition of Irving Trust Company, as Trustee under First Mortgage of New Orleans, Texas & Mexico Railway Company dated April 1, 1924, respectfully shows as follows:

1. Petitioner is the duly qualified and acting Trustee under the First Mortgage of New Orleans, Texas & Mexico Railway Company to Irving Bank-Columbia Trust Company, as Trustee, dated April 1, 1924. For a statement of the organization and powers of petitioner and its predecessors, the changes in corporate name by which Irving Bank-Columbia Trust Company became Irving Trust Company, the authorization of the First Mortgage Bonds of New Orleans, Texas & Mexico Railway Company (hereinafter sometimes termed the "Railway Company"), the authorization, execution and recording of the said First Mortgage, the delivery of the First Mortgage Bonds secured thereby, the fact that according to petitioner's records $42,645,900 in principal amount of said First Mortgage Bonds are now outstanding, the fact that according to petitioner's information upwards of $2,354,000 in principal amount of Income Bonds of the Railway Company are now outstanding and entitled to the security of the First Mortgage to the extent conferred by the First Mortgage, the securities held by petitioner, the defaults in payment of the interest which became due on April 1, 1933 and subsequently on said First Mortgage Bonds, the provisions of said First Mortgage as to remedies of peti-

tioner in the event of default in the payment of said interest, and similar matters, petitioner prays reference to and makes a part hereof its petition, verified January 31, 1934 and filed herein on February 19, 1934 (Printed Record, Vol. III, pp. 1129-1163). Petitioner further prays reference to and makes a part hereof a true copy of said First Mortgage (filed with said last-mentioned petition as Exhibit "A" thereto) and also the order, made and filed herein on April 5, 1934 (Printed Record, Vol. III, pp. 1185-1186), permitting the intervention of this petitioner herein.

2. On information and belief, New Orleans, Texas & Mexico Railway Company is, and at all times hereinafter mentioned was, a railroad corporation duly organized and existing under the laws of the State of Louisiana, approximately ninety-four per cent. (94%) of its capital stock being owned by Missouri Pacific Railroad Company.

3. On information and belief, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company are, and at all times hereinafter mentioned were, railroad corporations duly organized and existing under the laws of the State of Texas, the entire capital stock of each such company being owned by the Railway Company.

4. On information and belief, Missouri Pacific Railroad Company is, and at all times hereinafter mentioned was, a railroad corporation duly organized and existing under the laws of the State of Missouri.

5. On information and belief, International-Great Northern Railroad Company is, and at all the times hereinafter mentioned was, a railroad corporation duly organized and existing under the laws of the State of Texas, its entire capital stock being owned by the Railway Company, (although said International-Great Northern Railroad Company is not herein included in the term "Railway Company" or in the term "New Orleans, Texas & Mexico Railway Company" or in the term "subsidiaries" of the Railway Company).

6. On information and belief: Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company and International-Great Northern Railroad Company each filed herein on or about March 31, 1933, a petition seeking to reorganize under Section 77 of the Bankruptcy Act; and The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company each filed herein on or about May 1, 1933, a petition seeking to reorganize under said Section 77; and said companies were continued as debtors in possession of their respective properties until June 22, 1933.

7. On information and belief: Guy A. Thompson and L. W. Baldwin were, by order of the Court herein, appointed Co-Trustees of the properties of Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, International-Great Northern Railroad Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, San Antonio, Uvalde & Gulf Railroad Company and Houston North Shore Railway Company on June 22, 1933; they were appointed permanent Co-Trustees thereof on July 25, 1933; L. W. Baldwin resigned as such Co-Trustee on December 26, 1935; and Guy A. Thompson was thereupon appointed sole Trustee of the properties of each of said Railroad Companies and is at the present time acting as such Trustee.

8. There are pledged with, and held by, petitioner stocks and other securities of the following companies (all of which are included in the term "Railway Company" and in the term "New Orleans, Texas & Mexico Railway Company", unless otherwise appearing): The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, San Antonio, Uvalde & Gulf Railroad Company, and Houston North Shore Railway Company—all of which are debtors in this proceeding; also the following which (while subsidiaries of New Orleans, Texas & Mexico Railway Company and hereinafter included in the term "Railway Company" and in the

term "New Orleans, Texas & Mexico Railway Company", unless otherwise appearing) are not debtors in this proceeding: The Orange & Northwestern Railroad Company, Houston & Brazos Valley Railway Company, New Iberia & Northern Railroad Company, Iberia, St. Mary & Eastern Railroad Company, Asphalt Belt Railway Company, Sugar Land Railway Company, Asherton & Gulf Railway Company, Rio Grande City Railway Company, San Antonio, Southern Railway Company, and San Benito & Rio Grande Valley Railway Company. On information and belief, the said stocks and securities constitute all of the outstanding stocks and securities of said companies, other than some directors' qualifying shares.

9. On information and belief, Missouri Pacific Railroad Company acquired control of the properties of the Railway Company and of International-Great Northern Railroad Company by the acquisition of a majority of the outstanding capital stock of the Railway Company on or about January 1, 1925; and from a date shortly after the acquisition of such control the properties of the Railway Company have been operated continuously by Missouri Pacific Railroad Company with its properties and the properties of International-Great Northern Railroad Company as one railroad system.

10. On information and belief, the said railroad system has been so operated without regard to the particular rights and interests of the Railway Company, its security holders and creditors, and its records and accounts have not been so kept as properly to show the said particular rights and interests including especially the true income of the properties of the Railway Company.

11. On information and belief, the situation mentioned in paragraphs 9 and 10 hereof has continued down to the date hereof, except that during the year 1936 Guy A. Thompson, as Trustee as aforesaid, has made certain adjustments in favor of the Railway Company, in that effective on or about July 1, 1936 he changed the future basis of per diem charges against the Railway Company for use of cars so that the said charges against the Railway Company will be reduced in part, and effective on or about

August 1, 1936 he restored to the lines of the Railway Company certain sulphur traffic originating on the lines of Houston & Brazos Valley Railway Company (a wholly owned subsidiary of the Railway Company) which traffic theretofore had been routed over the lines of International-Great Northern Railroad Company.

12. On information and belief, the present practices of Guy A. Thompson, as Trustee as aforesaid, are inequitable and improper as against the Railway Company, its security holders and creditors including petitioner, as Trustee as aforesaid, and the holders of the bonds secured by the aforesaid First Mortgage under which petitioner is Trustee, and the said Guy A. Thompson, as Trustee as aforesaid, has refused or failed to rectify said practices although, in respect of most of said practices, due demands have been made upon him for a long time past to correct the said practices, to-wit: (a) the Railway Company has been, and is being overcharged for use of cars upon the basis of a so-called frozen per diem plan erroneously imposed by Missouri Pacific Railroad Company some years ago and since continued as between the Railway Company, International-Great Northern Railroad Company and Missouri Pacific Railroad Company—which charge has been corrected in part as aforesaid, but not as to a large balance of said overcharges; (b) substantial traffic originating on the lines of the Railway Company and which properly should move over its lines has been and is being diverted to the lines of International-Great Northern Railroad Company—such situation having been corrected as aforesaid only with respect to certain sulphur traffic originating on the lines of Houston & Brazos Valley Railway Company but not as to the balance of the diverted traffic; (c) the Railway Company has been, and is being, overcharged in large amounts as its proportion of the joint general expenses, joint traffic expenses, and other joint expenses, of the railroad system of Missouri Pacific Railroad Company; (d) Missouri Pacific Railroad Company—in violation of the particular rights and interests of the Railway Company, its security holders and creditors, including this petitioner and the holders of the bonds secured by the aforesaid First Mortgage—caused the Railway Company from time to time to purchase new locomotives

and to pay installments of principal and dividends on equipment trust certificates issued in respect thereof, which locomotives were unsuitable for use on the lines of the Railway Company, and have not been and are not being used upon said lines but have been and are being used on the lines of Missouri Pacific Railroad Company and of International-Great Northern Railroad Company, while old locomotives were assigned to, and have been and are being used, on the lines of the Railway Company, and no proper allowance has been or is being made to the Railway Company in respect of its ownership of said new locomotives or in respect of excess repair and other charges which the Railway Company has been and is being required to bear through the use of the old locomotives assigned to it; (e) The records and accounts of Guy A. Thompson, as said Trustee, and his predecessors in the operation of the properties of the Railway Company as a part of the Missouri Pacific system, have not been adjusted so as to show the true income of the Railway Company in respect either of current or prior periods.

13. On information and belief: it is the duty of the Trustee of the Railway Company in this proceeding to operate its properties and properly to adjust and keep its records and accounts in the interests of the Railway Company, its security holders and creditors, including this petitioner and the holders of the bonds secured by the aforesaid First Mortgage; similarly, it is the duty of the Trustee of International-Great Northern Railroad Company to operate its properties and properly to keep its accounts in its interests, and the duty of the Trustee of Missouri Pacific Railroad Company to operate its properties and properly to keep its accounts in its interests; it is the duty of the Trustee of the Railway Company to recover, by accounting proceedings or otherwise, for the estate of the Railway Company such amounts as are properly due to it from the estates of Missouri Pacific Railroad Company and of International-Great Northern Railroad Company; Missouri Pacific Railroad Company, International-Great Northern Railroad Company and the Railway Company are distinct corporate entities, each with its own properties, security holders and creditors; the rights and interests of the estate, security holders and creditors of

the Railway Company are in direct, important and immediate conflict with the rights and interests of the estates, security holders and creditors of Missouri Pacific Railroad Company and of International-Great Northern Railroad Company; although petitioner believes that Mr. Thompson has desired to be fair and just to all interests in the performance of his services as sole Trustee of said Companies, the said conflicts of interest make it impossible for the same person properly to serve as Trustee of the properties and interests of all of said estates; it is of paramount and urgent importance to the Railway Company and its estate, security holders and creditors—whatever may be the form of ultimate reorganization of the Railway Company—that, by correction of present improper and inequitable practices and by proper adjustment of past accounts, the true income of the Railway Company during the continuance of this reorganization proceeding and for such periods in the past as shall prove material should be correctly and properly ascertained and such accountings and recoveries had, for the estate of the Railway Company, as shall be proper and equitable; and only through the immediate appointment for the Railway Company of a separate, independent trustee having no adverse interests can proper, prompt and vigorous action be taken and prosecuted for the protection and enforcement of the rights and interests of the Railway Company, its estate, security holders and creditors.

Wherefore, petitioner prays

(a) that the Court appoint a separate trustee for the properties of New Orleans, Texas & Mexico Railway Company and its subsidiaries, The St. Louis, Brownsville and Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, San Antonio, Uvalde & Gulf Railroad Company and Houston North Shore Railway Company, with full power, subject to the control of this Court and to the lawful regulations of the Interstate Commerce Commission, to operate said properties in the interest of said Companies, their estates, security holders and creditors, and independent of the Trustee or Trustees of the properties of Missouri Pacific Railroad Company and International-Great Northern Railroad Company; and

(b) for such other and further relief as shall be just and equitable.

Dated: March 18, 1937.

IRVING TRUST COMPANY, as Trustee,
as aforesaid,
By F. G. HERBST,
Vice-President.

FORDYCE, WHITE, MAYNE & WILLIAMS,
506 Olive Street,
St. Louis, Missouri,
DAVIES, AUERBACH & CORNELL,
One Wall Street,
New York, New York,
Attorneys for Petitioner.

Attest:
W. MACALISTER, JR.,
(Seal) Assistant Secretary.

State of New York, } ss.:
County of New York, }

Frederick G. Herbst, being duly sworn, deposes [ans] says that he is a Vice-President of Irving Trust Company, petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be upon information and belief and as to those matters he believes it to be true.

F. G. HERBST.

Sworn to before me this 18 day of March, 1937.

GEO. R. HENRY,
Notary Public,
Kings County No. 422,
Register's No. 7094.

Cert. filed N. Y. Co. No. 221, Reg. No. 7H128. Commission expires March 30th, 1937.
(Seal)

Order Continuing Hearing Upon Petition No. 756-A of George H. Walker, et al., and Petition No. 757 of Irving Trust Company for Appointment of a Separate Trustee for New Orleans, Texas & Mexico Railway Company and Its Subsidiaries.

(Filed October 4, 1937.)

(Order Nos. 756-A and 757.)

In the District Court of the United States Within and For the Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

On oral motion of counsel for petitioners and for the trustee, hearing on petition No. 756-A (Rec. p. 5685) and petition No. 757 (Rec. p. 5703) which were set for October 5, 1937, are continued indefinitely, with right to any party in interest to have the petitions redocketed for hearing on thirty days notice to all the other parties in interest.

GEO. H. MOORE,
United States District Judge.

Exhibit 800.

189 I. C. C. 286
Missouri Pacific System
Proposed Reorganization as of January 1, 1936
Finance Docket No. 9918

Interstate Commerce Commission
Finance Docket No. 9146
Missouri Pacific Railroad Company
Reconstruction Loan

Submitted December 23, 1932 Decided January 4, 1933

Upon amended application of the Missouri Pacific Railroad Company for loans from the Reconstruction Finance Corporation, a further loan of $2,500,000 for specified purposes approved without prejudice to consideration of further loans upon the application. Terms prescribed. Previous reports 180 I. C. C. 463; 180 I. C. C. 509; and 184 I. C. C. 3.

Herbert Fitzpatrick, Andrew P. Martin and William Wyer for applicant.

Third Supplemental Report of the Commission.

Division 4, Commissioners Meyer, Eastman, Brainerd and Mahaffie.

By Division 4:

The original application in this proceeding was filed by the Missouri Pacific Railroad Company on January 29, 1932. The amount of the loan then sought from the Reconstruction Finance Corporation, hereinafter called the Finance Corporation, was $23,250,000 for certain specified purposes. The application was supplemented March 10, 1932, and March 17, 1932, to meet the requirements of Circular No. 2 of the Finance Corporation and to increase the total loans applied for in the original application by $1,400,000. The aggregate loans sought by the applicant thus became $24,650,000. Under dates of February 10, February 23 and March 23, 1932, we certified our approval

of loans of $1,500,000, $2,800,000 and $12,800,000, respectively, without prejudice in each instance to consideration of further loans upon the application. The circumstances are fully set forth in our reports, Missouri Pacific Railroad Company Reconstruction Loan, 180 ICC 463; 180 ICC 509, and 184 ICC 3. These loans aggregating $17,100,000 have been made by the Finance Corporation and are secured by the pledge of collateral consisting of:

$22,250,000	Missouri Pacific First & Refunding, Series I, 5% bonds of 1981,
1,900,000	New Orleans, Texas & Mexico First 4½% bonds of 1956,
1,000,000	Denver & Rio Grande Western Refunding & Improvement 6% bonds of 1974,
11,475,000	Common stock of The Texas & Pacific Railway Company and
160,000	Common stock of Ft. Worth Belt Railway Company.

In addition to loans by the Finance Corporation, the applicant has borrowed from the Railroad Credit Corporation a total of $3,800,000 for interest requirements, and that corporation has loaned to the International-Great Northern Railroad Company $750,000 and has approved a further loan of $400,000 to that carrier. The total of advances by the Railroad Credit Corporation to the applicant and its subsidiary is thus $4,950,000.

On December 17, 1932, the applicant filed an amendment to the original application requesting a further loan under the provisions of the Reconstruction Finance Corporation Act, approved January 22, 1932, as amended.* By the terms of that act our approval is a condition precedent to the granting of loans to railroad companies. We have made the required investigation.

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*The power of the Finance Corporation to make loans under the Act was extended to January 21, 1934, by a proclamation of the President of the United States, dated December 8, 1932.

The Amended Application.

The applicant seeks a further loan of $4,300,000 for a period of three years for the purpose of paying taxes and of assisting the applicant in meeting interest and principal payments on equipment trust obligations and certain mortgage bonds due in the near future. The requirements of the additional loan as set forth in the amended application are as follows:

	Amount of Loan Requested.
On or before December 30, 1932.	
To pay taxes amounting to $1,908,000 due not later than December 31, 1932	$1,900,000
On or before January 13, 1933.	
To meet principal payment on applicant's Equipment Trust, Series 41, of $693,400, due January 15, 1933	600,000
On or before January 31, 1933.	
To pay the following obligations due February 1, 1933:	

	Principal	Interest
Pacific R. R. of Mo. 1st Mtg. Bonds		$ 139,920
Mo. Pac. 1st & Ref. Mtg. Bonds, Series A		446,013
Mo. Pac. 1st & Ref. Mtg. Bonds, Series I		1,530,000
Plaza-Olive Bldg. 1st Mtg. Bonds	$ 1,875	4,045
Equipment Trust Cts., Series A	153,000	19,890
	$154,875	2,139,868
Total		2,294,743
		$1,800,000

In its original application and in its supplemental application of March 17, 1932, the applicant represented that it was unable to obtain the necessary funds requested in

whole or in part from any other source. In the present amendment to the application it asserts that this situation remains the same as previously stated.

The applicant states that no agreement has been made or will be made by it to pay any person, association, firm or corporation, either directly or indirectly, any commission or fee for the loan applied for, and that no such payments have been or will be made by the applicant.

Necessities of the Applicant.

In addition to the above-stated amount of $4,300,000 to meet requirements to and including February 1, 1933, the applicant will be faced with the necessity of providing cash to meet normal requirements to and including December 31, 1933, of $11,200,000, including similar requirements of the New Orleans, Texas & Mexico Railway Company and the International-Great Northern Railroad Company. On May 1, 1933, there will mature $34,548,000, principal amount, of St. Louis, Iron Mountain & Southern Railway Company, River & Gulf, 50-year, First Mortgage, 4 per cent bonds. These bonds are a first lien upon 781.47 miles of the applicant's system, including its principal low-grade freight line from Valley Junction to Thebes, Illinois, its White River Division from Carthage, Missouri, to a point near Batesville, Arkansas and other mileage along the west bank of the Mississippi River from a point near Helena, Arkansas, to a point near Ferriday, Louisiana. They are also a first lien upon certain equipment and upon the first mortgage bonds of the Union Railway Company (of Memphis) and of the Western Coal and Mining Company. Under the applicant's First & Refunding Mortgage there is reserved a like principal amount of bonds available for refunding the River & Gulf 4s.

The applicant has filed with its amended application a statement of its cash position by months on an actual basis from January to October, 1932, inclusive, and on basis of carefully prepared estimates for the period November 1, 1932, to June, 1933, inclusive. At our request the applicant has also filed an additional monthly cash forecast

for the last half of 1933. The estimates for the months of November, 1932, to July, 1933, inclusive, were prepared upon the assumption that traffic and earnings would continue, with seasonal variations, at about the present levels which are substantially lower than those experienced in the first half of 1932. Beginning with August, 1933, a continuing moderate increase in these levels has been anticipated. The estimates also anticipate continuance of the emergency increases in freight rates authorized in our decisions in Fifteen Per Cent Case, 1931, 178 ICC 539, 179 ICC 215, and the retention by the applicant subsequent to March 31, 1933, of the revenue derived from such increases. In the matter of non-operating income the estimates contemplate practically no receipts from dividends or interest, except such interest on advances to subsidiary companies as is being currently paid. Borrowings for applicant's requirements, including those covered by the present amendment to the application, are included in the total estimated receipts. No estimated cash requirement is shown in respect of the maturity of May 1st.

As to disbursements the forecast is made upon the assumption that payrolls will continue to reflect wages at current levels. Taxes are estimated to require slightly less cash outlay than during 1932. Estimated interest requirements include payments on all present and prospective borrowings, including loans from banks, the Railroad Credit Corporation and the Finance Corporation. Vouchers have been estimated to require cash expenditures at approximately the same rate as in 1932 and include payments due under contracts for purchase of stocks of certain terminal and land companies entered into in 1930. Payrolls and vouchers include estimated expenditures for a minimum program of additions and betterments at a rate slightly less than the experience of 1932. Intercompany transactions required to maintain minimum cash working balances with the several operating units of the system are forecast at approximately the same rate as in 1932.

The cash balance at the end of October, 1932, the latest month for which the actual figures are available, was $1,309,000. November with estimated borrowings of $200,-

000 ends with an estimated cash balance of $1,421,000. In December the estimate includes the item of $1,900,000 as the proceeds of the loan from the Finance Corporation covered by the present application and, per contra, a corresponding increase in tax vouchers. The cash balance at the end of 1932 is estimated to be $800,000. Similarly, through the months of 1933 estimated borrowings are so distributed in relation to cash requirements that the monthly balance of cash on hand is maintained at an average of approximately $1,000,000. At the end of 1933 the cash balance is estimated at $787,000.

As previously shown, the total loans from the Railroad Credit Corporation and the Finance Corporation, including the item of $1,900,000 for December 31 covered by the present application, amount to $23,950,000. Included in this sum is the item of $5,850,000 advanced by the Finance Corporation, with our approval, to meet 50 per cent of bank loans due April 1, 1932. The remainder, $18,100,000 represents the applicant's total borrowings of new money in 1932. Its cash forecast for 1933 includes estimates of new borrowings aggregating $13,600,000, including the two items totalling $2,400,000 covered by the present application. Thus the borrowings of new money in 1932 exceeded by $4,500,000 the estimated borrowings of new money in 1933, exclusive, of course, of the May 1st maturity of the River & Gulf bonds.

The maturity of the River & Gulf bonds represents not only the largest financial requirement in 1933, but by far the applicant's largest maturity until 1949. In addition, the other 1933 requirements, except those for which we may provide in this proceeding, place upon the applicant in the near future the necessity of providing substantial financial resources in some form.

In connection with any loan which we may approve upon the present application we shall expect the applicant within a reasonable time to formulate and present for our consideration a plan to meet the May 1st maturity.

Security.

For the additional loan now sought and for the existing loans, as well as for any further loans which we may approve upon the application, the applicant offers as security:

(a) Assignment to the Finance Corporation of advances by the applicant to its controlled companies, the New Orleans, Texas & Mexico Railway Company and International-Great Northern Railroad Company, in the approximate amounts of $9,955,000 and $2,486,000, respectively, a total of $12,441,000;

(b) $10,000,000 (or such greater principal amount as we may approve) of the applicant's First & Refunding Mortgage, 5%, Series I bonds of 1981 which we may authorize upon proper application under section 20 (a) of the Interstate Commerce Act.

The collateral securing existing loans of $17,100,000 by the Finance Corporation has been hereinbefore described. This consists principally of 5%, Series I, bonds of 1981 issued under the applicant's first & Refunding Mortgage which is a direct first lien upon 5,575 miles of the applicant's system and, subject to $52,599,500 of divisional mortgages, is a first lien upon the remaining 1208 miles. Moreover, it is a first lien upon $23,703,000, par value, of the preferred capital stock of the Texas & Pacific Railway Company—one of the few Class I carriers which will earn their fixed charges in 1932. These bonds are currently quoted on the New York Stock Exchange at around 19. Within two years these bonds have sold on the same exchange at par. A block of $61,200,000 of these bonds was distributed in March, 1931, at 95. During the period since 1925 to date the price has ranged as high as 104, and the average market price over that period has been in excess of 85. In 1932 the applicant earned approximately 71% of the interest requirements on its First & Refunding bonds outstanding in the hands of the public.

The next important item of the collateral securing existing loans consists of $11,475,000, par value of the common capital stock of the Texas & Pacific Railway Company.

This stock is also listed on the New York Stock Exchange where it is currently quoted 15 bid, 20 asked. This is the stock which in 1928 sold at 194⅝ and has had an average price on that exchange in the last eight years of 84½.

The $1,900,000 of New Orleans, Texas & Mexico First 4½s of 1956 are currently quoted on the New Orleans Stock Exchange at around 20. These bonds sold on the same exchange as high as 100⅞ from date of issue in 1927. The average price to date has been 76. Until 1930 these bonds were legal investments for savings banks in the State of New York.

The 5%, Series B, bonds of 1978, issued under Denver & Rio Grande Western Refunding & Improvement mortgage are listed on the New York Stock Exchange where they are currently selling at around 17. Since their issue in 1928 they have sold on the same exchange as high as 95, and the average price since listing has been 68¾. The bonds under this mortgage which are pledged as security for the loans carry a 6% coupon which justifies a higher market rating than that of the 5s.

In our previous reports we have shown our valuations of the applicant's property and have referred to subsequent changes therein. The long-range market prices of the securities resting on that property and which are pledged to secure the reconstruction loans to the applicant we have here shown.

The advances aggregating approximately $12,441,000, upon which interest is being currently paid at the rate of 6% per annum, represent open account indebtedness to the applicant by two of its controlled companies accumulated over a period of five years. All of these advances were used to pay for additions and betterments to the properties, except that during the last two years certain of the advances to the New Orleans, Texas & Mexico Railway Company were made to overcome operating deficits. In the case of both of the controlled companies the obligations to repay the advances lie between their first mortgage bonds and their capital stock. In the case of the International-Great Northern Railroad Company they are senior

as to the payment of interest on $17,000,000 of adjustment mortgage bonds, but junior to that bond issue as to security.

We have shown the current and long-term market quotations of the First Mortgage, 4½% bonds of the New Orleans, Texas & Mexico Railway Company. The capital stock of that carrier, of which there is but one issue, is currently quoted at around 16, with a price range for 8 years to a high of 159⅞ and an average price over that period of 114⅝. On basis of the current market quotations for the stock and bonds of the carrier the advances to it by the applicant bearing 6% interest would appear to have a comparable market value of about 24 per cent at which the total advances to that carrier would have a value of approximately $2,400,000.

Because its entire outstanding issues of capital stock is owned by the New Orleans, Texas & Pacific Railway Company it is impossible to make a similar computation of value for the advances to the International-Great Northern Railroad Company.

The assignment of advances by the applicant to its controlled companies and the pledge of additional bonds which we may authorize to be issued for the purpose under the applicant's First & Refunding Mortgage will improve the security for the total reconstruction loans to the applicant.

Conclusions.

We conclude:

1. That we should approve a further loan of not to exceed $2,500,000 to the applicant by the Finance Corporation, for a period not exceeding three years from the making of the advances thereon, for the purpose of paying taxes and the principal of equipment trust obligations, due December 31, 1932, and January 15, 1933, respectively, as hereinabove more fully described;

2. That the applicant should deposit with the Finance Corporation as security for the loan:

(a) Pledge of $10,000,000, principal amount, of the

applicant's First & Refunding Mortgage, Series I, 5% bonds of 1981, or such other principal amount of such bonds as we may authorize to be issued for the purpose;

(b) Pledge of $93,200, par value, of the capital stock of the American Refrigerator Transit Company, excepting therefrom such shares thereof as may be required to qualify directors;

(c) Pledge of $75,000, principal amount, of the first mortgage, 6 per cent bonds of the Prescott & Northwestern Railroad Company of October 1, 1934, and

(d) Assignment of advances by the applicant to its controlled companies, the New Orleans, Texas & Mexico Railway Company and International-Great Northern Railroad Company, in the approximate amounts of $9,955,000 and $2,486,000, respectively, a total of $12,441,000, which assignment should be in form satisfactory to the Finance Corporation;

3. That the applicant should agree with the Finance Corporation that all of the security for this and any other loan by that corporation to the applicant shall apply equally and ratably as security for all of such loans;

4. That the Finance Corporation will be adequately secured under these conditions, and

5. That the applicant should be required to report to the Finance Corporation and to us, in writing, within 30 days from the making of the advances upon the loan, the expenditure of the proceeds thereof for the purposes for which the loan is authorized.

An appropriate certificate of approval will be issued.

Supplemental Certificate.

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 4th day of January, A. D. 1933.

Finance Docket No. 9146.

Missouri Pacific Railroad Company Reconstruction Loan.

Further investigation of the matters and things involved in this proceeding have been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That this commission approves a further loan of not to exceed $2,500,000, for a term not exceeding three years from the making of the advances thereon, to the Missouri Pacific Railroad Company by the Reconstruction Finance Corporation, under the provisions of the Reconstruction Finance Corporation act and pursuant to the application in said proceeding, subject, however, to the following conditions:

1. That the Missouri Pacific Railroad Company deposit with the Reconstruction Finance Corporation as security for the loan:

(a) Pledge of $10,000,000, principal amount, of Missouri Pacific Railroad Company First & Refunding Mortgage Series I, 5% bonds of 1981, when issued, or such other principal amount of such bonds as this commission may authorize to be issued for the purpose;

(b) Pledge of $93,200, par value, of the capital stock of the American Refrigerator Transit Company, excepting therefrom such shares thereof as may be required to qualify directors;

(c) Pledge of $75,000, principal amount, of the first mortgage, 6 per cent bonds of the Prescott & Northwestern Railroad Company of October 1, 1934, and

(d) Assignment of advances by the Missouri Pacific Railroad Company to its controlled companies, the New Orleans, Texas & Mexico Railway Company and International-Great Northern Railroad Company, in the approximate amounts of $9,955,000 and $2,486,000, respectively, a total of $12,441,000, which assignment shall be in form satisfactory to the Reconstruction Finance Corporation;

2. That the Missouri Pacific Railroad Company agree with the Reconstruction Finance Corporation that all of the security for this and any other loan by that corporation to said company shall apply equally and ratably as security for all of such loans;

3. That the Missouri Pacific Railroad Company agree with the Reconstruction Finance Corporation to expend the proceeds of the loan herein approved solely for the purposes designated in said report; and

4. That within 30 days from the making of the advances upon the loan the Missouri Pacific Railroad Company report, in writing, to the Reconstruction Finance Corporation and to this commission the disposition of the proceeds of the loan for the purposes specified in said report.

By the commission, division 4.

GEORGE B. McGINTY,
(Seal) Secretary.

(Order of United States Circuit Court of Appeals remanding Causes to District Court, etc.)

United States Circuit Court of Appeals,
Eighth Circuit.

Nos. 12130 to 12136. May Term, 1943.

Saturday, May 8, 1943.

Missouri Pacific Railroad Company, Debtor, et al.,
Appellants,
vs.
John W. Stedman, et al., as a Protective Committee for Holders of Missouri Pacific Railroad Company First and Refunding Mortgage 5% Gold Bonds, et al.,
Appellees.

Appeals from the District Court of the United States for the Eastern District of Missouri.

The matter of the above entitled appeals having come on for further consideration on this day and the appellants and appellees appearing by counsel before the Court, and it being represented that, in view of changed conditions, and the decisions of the Supreme Court under date of March 15, 1943, in the cases involving the reorganization of the Western Pacific and the Chicago, Milwaukee, St. Paul & Pacific Railroad Companies, all or substantially all creditors and stockholders including the Debtor, parties to these appeals, are in agreement that the matter of the Plan of Reorganization should be referred back to the Interstate Commerce Commission,

It is Ordered that these appeals be remanded to the District Court for the purpose of holding the hearing on confirmation of the Plan of Reorganization, and if the District Court be so advised, for the purpose of referring the matter of said Plan of Reorganization back to the Interstate Commerce Commission for further consideration.

And it is further Ordered that if the District Court shall confirm the said Plan of Reorganization, or shall make an order or orders denying any motion or motions to refer the said Plan of Reorganization back to the Interstate Commerce Commission for further consideration, or if the District Court shall either approve or confirm any Plan of Reorganization which may subsequently be approved by the Interstate Commerce Commission and certified to the District Court, and any party or parties to these appeals shall appeal from any such order or orders of the District Court, then the record on appeal filed herein on December 20, 1941, shall be deemed to be and shall constitute a part of the record on appeal from any such order or orders of the District Court without being reprinted, refiled or recertified.

And it is further Ordered that the costs of these appeals, so far as not already paid, shall be paid by the Trustee of the Debtor.

May 8, 1943.

(Memorandum as to Order No. 2303 of the District Court directing hearing to determine whether the plan of reorganization should be confirmed, etc.)

On May 10, 1943 the District Court entered Order No. 2303. This Order directed that there would be a hearing before the Court on the 17th day of June, 1943 to determine whether the plan of reorganization of the Missouri Pacific Railroad Company, principal debtor, and of the other intervening debtors in the above entitled proceeding, should be confirmed, and to determine any and all other matters relevant thereto.

(Opinion of District Court on remanding the plan of reorganization dated April 9, 1940, to the Interstate Commerce Commission.)

(Filed July 29, 1943.)

[Memorandum No. 2356]

In the
District Court of the United States
For the Eastern Division of the Eastern Judicial
District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

The plan for the reorganization of the Missouri Pacific Railroad Company and its subsidiaries is before this Court for the second time. On July 12, 1941, we entered an order approving the plan which had been certified by the Interstate Commerce Commission and overruling objections to the plan which had been duly presented here. The dissatisfied interests thereupon took appeals to the Circuit Court of Appeals for the Eighth Circuit.

On October 9th, 1941, the Commission ordered the plan submitted to a vote, as is contemplated by subsection (e) of Section 77 of the Bankruptcy Act, which governs these proceedings. Votes were cast by creditors on November 19, 1941, and on March 28, 1942, the Commission certified the results of the balloting, showing that not every class of creditors approved the plan by a favorable vote of at least two-thirds in amount of allowed claims of each class. In fact, in each of six of the total of sixteen classes voting, a majority voted against the plan.

Appeals were argued and briefs submitted to the Circuit Court of Appeals, but no ruling on the merits of the objections was made by that Court. The Supreme Court had

granted certiorari in the matters of the reorganization of the Western Pacific Railroad Company, ... U. S. ..., and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, ... U. S. ... While the Missouri Pacific matter was pending in the Circuit Court of Appeals, the two above mentioned cases were argued and submitted to the Supreme Court, which handed down its decisions on March 15, 1943, Group of Institutional Investors, et al. v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co., et al., 63 Sup. Ct. 727, ... U. S. ...; Frederick H. Ecker, et al. v. Western Pacific Railroad Corp., et al., 63 Sup. Ct. 692, ... U. S. ... It was then deemed expedient to have the Missouri Pacific matter reconsidered here, and the Circuit Court of Appeals, by its order of May 8, 1943, remanded the appeals to this Court. Further specific objections were then filed in this Court and a hearing on those objections was had on July 16, 1943.

Our opinion on our first disposition of the plan, reported at 39 Fed. Sup. 436, contains a brief historical survey of this matter from the time debtor's petition was filed, March 31, 1933, to the date of the opinion, June 20, 1941, as well as a discussion of the debtor's affairs and features of the plan, none of which need be repeated here; nor do we find it necessary to retract any of our former views in order to conform to the opinions of the Supreme Court in the Western Pacific and Milwaukee decisions, supra. The matters now before the Court result from intelligence gained since our first disposition of the matter and were not before us at that time.

Section 77 of the Bankruptcy Act (11 U. S. C. 205), subsection (e), provides:

> "Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment. The judge shall, after notice in such manner as he may determine to the debtor, as

trustee or trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) it complies with the provisions of subsection (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in subsection (c), paragraph (12) of this section, may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is hereby given power to approve the same."

The first objection is based on the rule announced by Mr. Justice Douglas in the Milwaukee case, supra, that where a senior lienor receives securities in reorganization, including junior securities, of the face amount of his former lien, and junior lienors likewise participate in the reorganization plan, then the senior lienor must be given something additional to fully compensate him for his loss of seniority. And it was further held that it is the duty of the Interstate Commerce Commission and the District Court to weigh the value of the new securities given the senior lienor and determine whether in the matter of increased participation in earnings, assets or control, they

yield valuable new rights which are sufficient to compensate the senior lienor for his loss of seniority. Under the old equity practice which antedates Section 77, the "full priority" rule was announced in the case of Northern Pacific Ry. Co. v. Boyd, 228 U. S. 482. This rule was incorporated in Section 77B of the Bankruptcy Act, Consolidated Rock Products Co. v. DuBois, 312 U. S. 510; Case v. Los Angeles Lumber Products Co., 308 U. S. 106. In the Milwaukee opinion, supra, Mr. Justice Douglas stated, l. c. . . .:

"The rule of the Boyd case 'protects the rights of senior creditors against dilution either by junior creditors or by equity interests.' Marine Harbor Properties, Inc. v. Manufacturers Trust Co., supra. That view has not been contested here. Hence, as we indicated in the Consolidated Rock Products case, where junior interests participate in a plan and where the senior creditors are allotted only a face amount of inferior securities equal to the face amount of their claims, they 'must receive, in addition, compensation for the senior rights which they are to surrender.' 312 U. S. 529. And we stated that whether they should 'be made whole for the change in or loss of their seniority by an increased participation in assets, in earnings or in control, or in any combination thereof, will be dependent on the facts and requirements of each case.' Id., p. 529. We felt that result was made necessary by the ruling in the Boyd case that, 'If the value of the road justified the issuance of stock in exchange for old shares, the creditors were entitled to the benefit of that value, whether it was present or prospective, for dividends or only for purposes of control.' 228 U. S. p. 508. We adhere to that view. Unless that principle is respected, there will be serious invasions of the rights of senior claimants to the benefit of junior interests. The property of one group will be subtly appropriated to pay the claims of another group while lip service is rendered the principles of priority."

"Some argument is advanced that under this plan the General Mortgage bondholders do receive as

against the junior interests compensatory treatment which is adequate to make up for the seniority rights which they are to surrender . . ."

"But neither the Commission nor the District Court considered the problem. As we have indicated, the question whether senior creditors have received 'full compensatory treatment' rests in the informed judgment of the Commission and the Court. A decision on that issue involves a consideration of the numerous investment features of the old and new securities and a financial analysis of many factors . . . Our conclusion on the point is that, since junior interests are participating in the plan, the Commission and the District Court should determine what the General Mortgage bonds should receive in addition to a face amount of inferior securities equal to the face amount of their old ones, as equitable compensation, qualitative or quantitative, for the loss of their senior rights."

In behalf of holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds and holders of Frst Mortgage Bonds and Income Bonds of New Orleans, Texas and Mexico Railway Company, it is contended that each of them has lost seniority rights under the plan formulated by the Commission, and that the question as to whether there has been full compensation for such loss has not been considered. We think this is true.

In the "Commission's Report", Finance Docket No. 9918, Missouri Pacific Railroad Company Reorganization, the Commission described the lien of the Missouri Pacific First and Refunding Mortgage Bonds (p. 12027 et seq. of the permanent record of the reorganization proceedings):

"The bonds are secured by a first lien on about 5,400 miles of railroad of the Missouri Pacific Railroad Company and have also a lien on some 1,200 miles subject to the prior liens of about $50,000,000 of bonds secured by the various underlying mortgages. They are also secured by a first lien upon practically all the equipment owned by the Missouri Pacific, and are

secured by the debtor's equity in all equipment now subject to equipment trust. They are further secured by various collateral, the most important of which consist of 2,851 shares of the capital stock of the American Refrigerator Transit Company, about 57 percent of the outstanding stock of that company, and 237,030 shares, being the entire issue, of the 5-percent non-cumulative preferred stock of the Texas & Pacific Railway Company, the dividend on which has been earned since 1935, and is being currently paid."

Discussing the allocation of securities in the new company, the Commission stated in its report (p. 12194 of the permanent record):

"The claim of holders of Missouri Pacific Railroad Company first and refunding mortgage 5 percent bonds of 1965-81 constitutes by far the largest class in total amount of creditors in this proceeding. As of January 1, 1940, the total of the claim was $295,134,-203. The lien of the mortgage securing these bonds has been hereinbefore described. Within the limitations of the permissible capitalization of the new company and total issuable amounts of the several kinds of new securities as determined herein and in view of the permissible capitalization found by us for the Missouri Pacific Railroad Company, and the requirements for satisfaction of other claims having prior or equal liens against the property, it is necessary that the first and refunding bondholders, in order that they may receive the full recognition of their claim to which they are entitled, receive some new securities of each class provided for under our plan (excepting the 10-year notes and series-A first-mortgage bonds, which are to be used exclusively in satisfaction of prior claims or claims entitled to special treatment as heretofore described)."

"The amount of each new class of security which should be allocated to the first and refunding mortgage bondholders has been developed on the record as a matter for the exercise of judgment based principally upon a consideration of the relative treatment

that should be accorded the first and refunding mortgage bondholders, the New Orleans first mortgage and income mortgage bondholders, and the International first mortgage bondholders."

According to the plan of reorganization, holders of the Missouri Pacific first and refunding bonds are to get approximately 30% of first mortgage bonds in the new company and the remainder in various classes of inferior securities, including preferred and common stocks, and junior lienors likewise participate in the reorganization. It does not appear from the Commission's report that it has considered the question of full priority treatment from the viewpoint decreed by the Supreme Court in the Milwaukee case, supra. Since treatment of the reorganization plan lies in the first instance with the Commission, it is therefore necessary in accordance with the provisions of subsection (e) of Section 77 to refer the matter back to the Commission for further consideration.

A detailed examination of the objection of the New Orleans, Texas and Mexico bondholders will not be necessary here, but it is sufficient to say that their situation is in all respects similar to that of the Missouri Pacific first and refunding group, and consideration must likewise be given to their plea for full priority treatment.

In behalf of other bondholders, junior to those mentioned above, but senior to other claimants participating in the reorganization, it is contended that the rule of full priority treatment applies to them, in turn, after full compensation has been made to underlying liens. These objectors are the first-mortgage bondholders of the International-Great Northern Railroad Company. We think the sense of the Boyd, Consolidated Rock Products, Western Pacific and Milwaukee cases, supra, is that a correct application of the rule of full priority treatment requires a recognition of the right these bondholders contend for. In other words, a lienor having prime seniority must receive full compensation including compensation for lost seniority before anything can be given to lienors having secondary seniority. Then, if any assets remain, the liens of sec-

ondary seniority must be fully compensated for, including compensation for lost seniority, before anything can be given to lienors having tertiary seniority. And so on down the line.

It might be well to point out, however, that nothing in the Milwaukee case indicates that new securities in face amount *greater* than the face amount of the retired lien need be allocated in order to give full compensation. The Milwaukee opinion states, l. c. . . ., that compensation for lost seniority may consist of "increased participation in assets, in earnings or in control". Thus a senior lienor, having been deprived of his full seniority in a reorganization plan, may receive a mixture of senior and junior securities in the new company, equal to the bare face value of his claim, and yet have been fully compensated for his loss of seniority by increased participation in earnings or control.

All interested parties in this matter seem to be in agreement on the second objection, that changed conditions since the plan was formulated now make it inequitable. The revenues and earnings of this road, like others, has increased tremendously during the past few years, resulting in a sizable increment of cash. As of June 30, 1943, the system's balance sheet showed cash items of $125,195,562.64. On December 31, 1939, just a short time prior to the effective date of the plan under consideration, the amount was $16,326,749.37; that was considered by the Commission to represent the bare minimum of working capital needed by the system. Thus there has been an increase of $108,868,813.27 during the period noted. Even after setting aside a working fund and reserves for taxes and other deferred charges, $57,822,419 of the amount on hand remains, clear and unencumbered, and in excess of debtor's business needs. In other words, a surplus of over 10% of the proposed capitalization of $560,000,000 would accrue to the new stockholders if the plan of reorganization were consummated now. Debtor's assets, according to its balance sheet, have increased from $796,522,113 on December 31, 1939, to $932,171,782 on April 30, 1943, an increase of $135,649,569 for approximately the same period

as noted above. At the same time, there have been substantial additions to the railroad plant in the way of Additions and Betterments, representing an investment of over $48,000,000 since 1938.

Greatly increased earnings were realized by both the Western Pacific and Milwaukee roads pending final hearings on their respective plans of reorganization, and in each case objections were raised because of that circumstance. Nevertheless, the respective District Courts having jurisdiction of those reorganizations refused to send the plans back to the Interstate Commerce Commission and these rulings were upheld on review. In the case before us, however, we are viewing the situation at a later date and the record presents a much stronger case in favor of the objectors than was true in either the Western Pacific or Milwaukee cases.

Evidence in the Milwaukee case brought the record on cash and earnings down through the year 1941, and while the most recent years showed earnings far in excess of what the Commission had determined to be a "normal" year, these earnings did not equal the best year in the company's history, nor does it appear from the facts stated in the opinion that the cash items, at the time of the hearing, bulked as large in proportion to the proposed capitalization as is the case with the Missouri Pacific.

The record in the Western Pacific case was brought down through November, 1942. It was shown that earnings sufficient to pay all charges and allow a $3 dividend on the new common stock had been realized in 1942 by only seven months operations, but on the other hand had been attained in only three other years of the road's entire history.

In the Missouri Pacific matter, we are able to view affairs from the perspective of 1943, and we find that cash has continued to accumulate at an unusual rate. With due respect to the Interstate Commerce Commission and its meticulous study of this railroad system, we believe that operations on the present scale were not envisioned in its picture of this system's affairs. The Commission's study

of earnings available for fixed charges in past years covered the years 1925 to 1936, inclusive. The largest earnings during that period were realized in the year 1929, amounting to slightly over 34 million dollars. (To present the full picture, we will note that earnings sank below 6 million dollars in 1935, and that from 1931 to 1940, earnings were insufficient to meet all fixed charges.) Comparable figures for recent years show earnings in excess of 30 million for the year 1941, over 66 million for the year 1942 and slightly more than 24 million for the first five months of 1943 (yielding a rough estimate of some 57 million for the entire year of 1943). The Commission's estimated "normal" year is a little over 22 million dollars. Looking at the figures for total railway operating revenue, which would be some 129 million in a "normal" year according to the Commission's estimate, we find that 1941 yielded 144 million dollars; 1942, 231 million dollars; an estimated 271 millions in 1943 and about the same in 1944. (The estimates issued from the debtor's Trustee.) At the same time, the railway operating ratio, which is the ratio of total railway operating expense to the above figure, stood at 68.99 in 1941, 56.74 in 1942 and 52.16 for the first five months of 1943, indicating more profitable operations in each successive period.

While it was held in the Western Pacific case, supra, that the Commission need not indulge the presumption that the road will ever enjoy traffic in such volume as to use the full extent of its facilities, nevertheless when we are faced with the established fact that something closely approaching this situation has been attained, and has resulted in a large accumulation of surplus cash, we believe that that circumstance should be taken into account in determining whether a reorganization plan should not be revised in view of changed conditions arising since the formulation of the plan, in order to be fair and equitable as those terms are understood in law.

The Commission's own report indicates that its judgment would have been different had it been in a position to make use of cash in the amount now available. Referring to five underlying bond issues which had matured in

1938 and on which current interest was being paid at the time of the hearing before the Commission, it said (Permanent Record, p. 12163):

> ". . . there appears to be no doubt that these obligations, matured in 1938, are entitled to cash payment, or as near to its equivalent as is practicable."

The issues referred to are the Pacific Railroad Company of Missouri first-mortgage 3-percent bonds in the amount of $6,996,000; Pacific Railroad Company of Missouri Carondelet branch first-mortgage 4½-percent bonds in the amount of $238,000; Pacific Railroad Company of Missouri second-mortgage 5-percent bonds in the amount of $2,573,000; Missouri Pacific Railway Company third-mortgage 4-percent bonds in the amount of $3,828,000; and Pacific Railroad Company of Missouri real-estate mortgage 5-percent bonds in the amount of $799,000. An issue of collateral-trust 10-year notes, bearing 3½ percent, in the amount of $14,434,000 was provided to liquidate these five underlying bond issues. The language quoted above suggests that these issues would have been paid off in cash if it had been available in sufficient amount at the time the plan was formulated.

Likewise, provision was made for the issuance of securities to reimburse the Reconstruction Finance Corporation and J. P. Morgan and Company for money loaned, but it was contemplated that these claims should be diminished as much as possible pending consummation of a plan of reorganization. There is a strong likelihood that here too, cash, if available, would have been used to liquidate claims.

It appears, therefore, that if the Commission is still of the same opinion, the accumulated cash might well be used to liquidate some or all of these especially preferred claims. Since full priority treatment of senior lienors may involve the allocation of additional securities to those groups, that may then be accomplished without disturbing the proposed financial structure to the extent that might have been necessary had this cash not been available.

We think the Commission might also consider the record of the past few years, if its best judgment so dictates, as bearing on a possible revision of the system's valuation. Recent earnings, together with the present enhanced value of the road, might justify a higher valuation of the property, and at the same time be compatible with the public interest. Valuation is, of course, a matter entirely within the jurisdiction of the Interstate Commerce Commission, provided only that proper legal criteria are used.

Another objection urged, this in behalf of the debtor, is that the dissent of a majority of each of six out of sixteen groups of creditors voting on the plan requires this Court as a matter of law to refer the matter back to the Commission. The theory of this argument is that the provisions of Section 77, subsection (e), relative to approval of a reorganization plan when two-thirds of each group of creditors is in accord, contemplate a means for effecting a reorganization over the obstructing tactics of a dissenting minority. But it is said that the section also contemplates that "arbitrary compulsion of plans over the dissents of the interested classes is not intended, nor is it believed that the courts will override dissents by any large number of such classes, or by a single large class, excepting where it is established that they have no interest in the property . . .". The quotation is from a statement by the then Federal Co-Ordinator of Railroads filed with the House and Senate referring to the bill drafted under his supervision and which later emerged as Section 77 of the Bankruptcy Act. This is cited as part of the legislative history of the act, said to have great persuasive force in its interpretation. Such interpretation should be resorted to, however, only where a statute is ambiguous. U. S. v. Standard Brewery, Inc., 251 U. S. 310; Helvering v. N. Y. Trust Co., 292 U. S. 455. And in view of the great stress on the public interest in railroad reorganizations, expressed in the Western Pacific and Milwaukee cases, supra, we do not feel constrained at this time to rule that a plan of reorganization may not be confirmed over the objections of a majority of one or more classes of creditors. We can conceive of a situation where one or more classes of creditors would vote against a plan even though it had

met all legal requirements including those of fairness and equity. According to the contention here made, the Court cannot override the creditor's veto and the reorganization process might then be continued indefinitely and perhaps forever. This is not to be countenanced. Against the public interest, even a large group of creditors may be considered to be but a dissident and obstructive minority. Of course, in the event of such an impasse, the Court might dismiss the proceedings, but this is discretionary and need not be resorted to where a fair plan is produced.

However, it is readily conceded that if substantial agreement can be had, a more desirable end will have been reached. For other reasons, stated above, we must refer this matter back to the Interstate Commerce Commission. It is alleged by certain of the parties appearing here that a compromise plan has now been contrived which will meet the approval of substantially all the parties. Other interests have taken exception to this statement. Nevertheless, if a close approach to unanimity among the groups can be had on the compromise plan, and if the Commission finds that the public interest will be served by such a plan, unquestionably that would offer the best solution to the problem.

There is one small point remaining, which perhaps requires comment. The Western Pacific and Milwaukee cases, supra, have held that the Commission may fix a date, other than the date of debtor's petition, as the effective date of a plan. In view of the lapse of time since the present plan was certified to this Court by the Commission, it would be well, we think, to fix another effective date when a plan is again certified, regardless of what other changes are made by the Commission.

For the reason that no consideration has been given by the Commission to compensation for loss of seniority rights, and for the further reason that the changed conditions arising since the formulation of the Plan make it desirable that the Commission should have further opportunity to consider whether the Plan as formulated can be improved upon at this time, the Plan of Reorganization

certified to this Court on April 9th, 1940, is referred back to the Interstate Commerce Commission, together with the record and all of the papers forwarded by the Commission to this Court with the Plan, to be further considered.

GEO. H. MOORE,
United States District Judge.

Dated this 29th day of July, 1943.

Order

That the Plan of Reorganization Be Not Confirmed and That the Case Be Referred Back to the Interstate Commerce Commission for Further Proceedings.

(Filed July 29, 1943.)

[Order No. 2356]

In the
District Court of the United States
For the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

The Interstate Commerce Commission having certified to this Court, by certificate dated March 28, 1942 and filed herein, that six of the sixteen classes of creditors and stockholders to whom the same was submitted have rejected, by the votes stated in said certificate, the plan of reorganization which was approved by the Interstate Commerce Commission in its Order and Supplemental Order dated January 10, 1940 and April 9, 1940, respectively, and by this Court in its Order dated July 12, 1941; and the Circuit Court of Appeals for the Eighth Circuit having, by its order dated May 8, 1943, ordered that the appeals

taken to it from this Court's approval of the plan of reorganization be remanded to this Court for the purpose of holding a hearing on confirmation of the plan, and if this Court be so advised, for the purpose of referring the matter of the plan back to the Interstate Commerce Commission for further consideration, said order of the Circuit Court of Appeals reciting that all or substantially all creditors and stockholders, including the Debtor, parties to such appeals, were in agreement that the matter of a plan should be referred back to the Commission; and this Court having, by its Order of May 10, 1943, as supplemented by its Order of June 17, 1943, fixed July 16, 1943, for a hearing to determine whether said plan of reorganization shall be confirmed and to determine any and all matters relevant thereto, and notice of this hearing having been given to all parties in interest in the manner provided by this Court's order; and the Protective Committee for Holders of Missouri Pacific Railroad Company First & Refunding Mortgage 5% Gold Bonds, the Committee for Holders of First Mortgage Bonds and Income Bonds of New Orleans Texas & Mexico Railway Company, and Savings Banks Trust Company Representing Mutual Savings Banks in New York holding said Bonds, the Protective Committee for Holders of St. Louis, Iron Mountain & Southern Railway Company River & Gulf Divisions 4% First Mortgage Bonds, the Protective Committee for the General Mortgage Four Per Cent. Gold Bonds of Missouri Pacific Railroad Company, Alleghany Corporation and the Debtor, having filed herein their motion, made July 16, 1943, reciting, among other things, that the plan of reorganization was rejected by six of the sixteen classes of creditors and stockholders as aforesaid and that it does not appear that the Commission considered the problem of compensation to creditors as it must under the recent decision of the United States Supreme Court in Group of Institutional Investors, et al. v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co., et al., 87 L. Ed. 687, and that there has been a substantial change in conditions, particularly the increase in cash items, since the time when the Commission approved the plan, which raises a serious question as to whether the Plan is fair and equitable; and it appearing to the Court that the Debtor and representatives of the

major classes of creditors and stockholders, including the moving parties aforesaid, are in agreement that the plan of reorganization should not be confirmed by this Court and are further in agreement that the case should be referred back to the Commission; and it appearing to this Court that the Debtor and such representatives, including the moving parties, have reached an agreement on modifications of the plan of reorganization; and the Court at the hearing to determine whether the plan shall be confirmed and any and all matters relevant thereto having heard the parties in interest in support of, and no one appearing in opposition to, said motion that this Court not confirm the plan and that it enter an order referring the case back to the Interstate Commerce Commission for further proceedings in accordance with the provisions of Section 77 of the Bankruptcy Act, as amended, and in respect of other relevant matters, and the parties having presented additional evidence at said hearing and the Court having heard arguments of counsel thereon, and the Judge of this Court having filed herein on July 29, 1943, his opinion stating his conclusions with respect to the confirmation of the plan and his reasons therefor and his conclusions in view of the changed conditions; it is thereupon

Ordered:

That the case be and hereby is referred back to the Interstate Commerce Commission, pursuant to subsection (e) of Section 77 of the Bankruptcy Act, as amended, for further proceedings in accordance with the applicable provisions of said Section 77, including the consideration of modifications of the plan or the proposal of new plans.

The Clerk of this Court shall forthwith transmit to said Commission (a) a copy of all evidence received by this Court at said hearing on confirmation; (b) a copy of the opinion of this Court stating his conclusions with respect to the confirmation of the plan and the reasons therefor, and (c) a certified copy of this order.

Dated July 29, 1943.

GEO. H. MOORE,
United States District Judge.

(Order of Interstate Commerce Commission setting proceeding for hearing in Brooklyn, New York, on October 19, 1943.)

Interstate Commerce Commission
Washington

Finance Docket No. 9918

Missouri Pacific Railroad Company Reorganization

The above-entitled proceeding is assigned for further public hearing under the provisions of section 77 of the Bankruptcy Act, as amended, on October 19, 1943, at 9:30 A. M., at the Hotel St. George, Brooklyn, N. Y., before Director Oliver E. Sweet and Examiner R. H. Jewell, of the Bureau of Finance of the Interstate Commerce Commission.

The hearing is to be held for the purpose of receiving further evidence with respect to the matters requiring further consideration by the Commission pursuant to the opinion and order of the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, entered July 29, 1943, referring the proceedings back to the Commission, including evidence in support of and in opposition to a compromise plan filed with the Commission on September 28, 1943.

The parties who intend to introduce evidence are requested to transmit copies of any exhibits which they expect to present to the Commission's, Bureau of Finance and the parties to the proceedings on or before October 11, 1943.

W. P. BARTEL,
Secretary.

Dated at Washington, D. C.
September 30, 1943.

(Portion of Transcript of Testimony and Exhibits received in evidence at Hearing in Brooklyn, New York, on October 19, 20 and 21, 1943.)

Afternoon Session 2:00 P. M.

(Whereupon, the hearing was resumed, pursuant to recess.)

Director Sweet: Come to order, gentlemen.

Mr. Biggs: I have a petition to intervene on behalf of Helen J. Comstock, as the owner of common stock of the New Orleans, Texas & Mexico Railroad.

Director Sweet: Will you distribute copies and then call it to our attention again during the afternoon, when there is an opportunity for anybody to make any objection they want to make. Just distribute them to the parties who are here.

Will you continue with your testimony, Mr. Wyer?

The Witness: Before lunch I was describing the alternative offers of securities, on the one hand, against cash, on the other.

Now, of course, the calculations which bring the total captalization of this proposed plan down to the total capitalization of the Commission Plan are based upon the assumption that all security holders will accept the cash offer. There may, of course, be some security holders who will not accept the cash offer, and if any of them do not, then unless there were some way to correct it, you would have the possibility of a higher capitalization than provided in the Commission Plan.

For example, if you look at Schedule A in Exhibit 883, you will notice that if a First & Refunding, Series A Bondholder accepts the security offer instead of the cash offer, he gets $274. of Class A Common instead of $71.10 in cash, so that to the extent of the difference between those two figures, or approximately $203, the outstanding capitalization of the new company would be increased over and above the assets that were there to support it.

Now, in order to provide a mechanism for correcting that, this Plan provides that in the event any security

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Now, in order to provide a mechanism for correcting that, this Plan provides that in the event any security

holder prefers the security option, the cash which he turns down and which he otherwise would have gotten if he had taken the cash option, is turned over to the Reorganization Managers and they are authorized to buy the necessary securities to keep the capitalization within the total approved; that is, the total provided in the Plan on the basis of all security holders accepting the cash options.

That means, for example, that if a First & Refunding Bondholder takes the security option instead of the cash option, the Reorganization Managers are given that cash and they must be able to buy common stock at approximately 26 or better in order to counteract the effect of that security holder taking the security option instead of the cash option.

If the security holder who takes the security option is a New Orleans, Texas & Mexico Bondholder, then they must buy Series B General Mortgage Bonds at 62 or better in order to keep the capitalization within the total provided in the Plan.

Now, in connection with the purchases of Income Bonds, several of the large holders of Missouri Pacific securities who will receive Series B Income Bonds in connection with the Plan have indicated to Mr. Sturgis and me that they will provide enough Income Mortgage Bonds at 62 to permit this to be done if those bonds are not available in the open market, so that that insures that part of the Plan being carried out. They have enough securities so that they will be able to provide all the Income Bonds, Series B, at 62 necessary to carry out that part of the work of the Reorganization Managers in case any of the New Orleans, Texas & Mexico First Mortgage Bondholders take the security option instead of the cash option, so that assures that the debt ratio—the ratio of debt to total capitalization—will not be disturbed by anybody taking the security option instead of the cash option.

Now, when you come down to the common stock, the Plan provides that the Reorganization Managers may purchase either the "A" Common or the "B" Common. Of course, whichever they purchase, it doesn't disturb the ratio between debt and stock. Either one accomplishes the same result of keeping the capitalization within the desired limit. As I said, they must purchase this at 26 or less in case anybody takes the security alternative.

As an example of what this may mean, the General Mortgage Bonds are now selling at approximately 21½, and they receive in this Plan nearly 14 shares of the new Class A Common, so that that is a price, at the present market, of approximately 15½ for the Class A Common. The Convertible Bonds are selling at present at about 10½, and they receive ten shares of the Class B Common in this Plan, so that is a market price at present of about 10½ for the new Class B Common.

Inasmuch as the Reorganization Managers can, if they have to, pay up to 26 for either the Class A or the Class B Common, there would appear to be plenty of margin between 26 and the present indicated prices of 15½ and 10½ for that stock so that they can make the necessary purchases if anybody should prefer the security alternative.

The Plan further provides that if the money not taken by security holders who take the security alternative is more than sufficient to buy the necessary stock or income bonds, so that there is some left over, that goes to retire other debt at market, so that this provision of the Plan has within it the possibility of improving the debt ratio further and reducing the capitalization below the $560,000,000. in case the securities can be bought at less than 62 for the Income Bonds and less than 26 for the Common Stock.

Mr. Sturgis and I think that this feature of the Plan is entirely feasible and that it will not result in increasing the total capitalization above that provided in the Plan, but that, on the contrary, it will result in decreasing the total capitalization if anybody takes the security alternative.

Exam. Jewell: Is the exercise of the option dependent upon the Reorganization Managers being able to buy the Income Bonds and the stock at the appropriate prices?

The Witness: No, the exercise of the option is absolute; that is, the security holder has the choice, and then if he takes the choice, the cash is turned over to the Reorganization Managers and they buy whatever they can buy.

As I have said, in case of the Income Bonds, they know they can buy that at 62 because that commitment

has been given. They do not know whether they can buy the stock, of course, at 26.

It simply looks, on the part of the current market, as if there was plenty of margin so that they could be sure that the stock was not selling above 26. There is no condition attached to the alternative. The security holder has that absolutely.

Director Sweet: And then there is no limitation on the price the Reorganization Managers may pay for other securities?

The Witness: No, there is not as to the stock. They would have to pay the current market, and I imagine that if they had to pay more than 26, they would spend all their money and buy as much as they could, and you would have a slight increase in the capitalization which would be represented in common stock.

As I say, however, we think that the danger of that is very remote.

Exam. Jewell: Could a creditor who is entitled to General Mortgage Bonds and who exercised the option to take the General Mortgage Bonds—could his cash be used to purchase stock?

The Witness: No, his cash would have to be used to purchase the bonds. Those we know can be purchased at the necessary price.

Director Sweet: Mr. Biggs, you offered this petition for leave to intervene on behalf of Helen J. Comstock awhile ago?

Mr. Biggs: That is correct.

Director Sweet: Have you distributed copies?

Mr. Biggs: I have.

Director Sweet: Is there any objection to receiving this?

(No response.)

Director Sweet: The petition is granted. You may proceed, Mr. Biggs.

Cross-Examination.

Q. (By Mr. Biggs) Mr. Wyer, who employed you to prepare this Plan of Reorganization and prepare these exhibits and appear here today?

A. I was asked to do this by several of the representatives of security holders of the Missouri Pacific, and Mr. Young, Chairman of the Board of the Alleghany Corporation, agreed that if I would do it, he would pay my charges for that.

However, it was understood that I was to act as a mediator. I was not to be employed by Alleghany Corporation alone; I was acting as a mediator for all representatives interested in the Plan.

Q. If I understand you correctly, all compensation you receive for your efforts in regard to this Plan will come from the Alleghany Corporation; is that correct?

A. Yes. I understood that that was Alleghany's contribution to the efforts to get an agreement.

Mr. Teitelbaum: May I say, Mr. Director, that at the time that commitment on the part of the Alleghany Corporation was made, it was with the reservation that it would be an appropriate expense in the proceeding. I take it that Alleghany would probably make an application for the reimbursement of Mr. Wyer's compensation.

Director Sweet: We will not settle that today.

Mr. Teitelbaum: I don't expect you to.

Q. (By Mr. Biggs) There was no reservation as far as you were concerned, though? As far as you are concerned, you are looking to Alleghany; is that correct?

A. For my money, yes, sir.

[A. For my money, yes, sir.]

Q. Now, you have stated that you have negotiated with several parties in promulgating this Plan. Now, who were the parties that actually negotiated?

A. Well, Mr. Sturgis and I were the mediators, so to speak, and we would negotiate with various people. Some of them Mr. Sturgis would negotiate with; some of them I would. Sometimes we would both negotiate with them.

For the Reconstruction Finance Corporation, Mr. Sturgis

handled all of those negotiations, or all of the discussions with them. I understand he handled them with Mr. Frank C. Wright and Mr. James Homire. There may have been some others; I know that he talked with those two gentlemen.

As to the holders of the bank debt, Mr. Sturgis also handled that, and his conversations were with Mr. George Whitney, and I think Mr. Bovenizer of Kuhn-Loeb. He also had some discussions with some of the officers of the Guaranty Trust Company, but I don't know who those gentlemen were.

As to the First & Refunding Committee, the discussions were with Mr. Stedman, the Chairman; Mr. Conroy, the Secretary; Mr. Kitchel and Mr. McConanghy, of counsel; and there were also some meetings—two, I think—with the full committee at which Mr. Sturgis and I appeared.

The New Orleans, Texas & Mexico Committee—the negotiations were almost entirely with Mr. Adkins, counsel for the Committee.

Q. Who did the negotiating with them, you or Mr. Sturgis?

A. Both of us.

As to the International-Great Northern First Mortgage Trustee, I think I handled most of those myself, although Mr. Sturgis handled some of them. There were Conversations with Mr. Lindsay Bradford of the City Bank, and Mr. Cole of counsel, and several of the other officers of the City Bank.

As to the General Mortgage Committee, the negotiations were handled by both of us with Mr. Delafield, the Chairman, and Mr. Freund, counsel.

Regarding the Trustee of the Serial 5¼s, those were handled, I think, entirely by Mr. Sturgis, and I believe he discussed those matters with Mr. Ottiwell of the Chemical Bank. He may have discussed it with others, but I know of Mr. Ottiwell as one with whom he discussed it.

The International-Great Northern Adjustments were handled by Mr. Sturgis, with Mr, Downing of the New York Trust Company and, I believe, others, although I do not know any other names.

The negotiations with the Iron Mountain Protective Committee were handled by both of us with Mr. Paige, the Chairman of the Committee, Mr. Bachman, the Secretary; Mr. Bourne, counsel.

Q. With whom?

A. Mr. Bourne—B-o-u-r-n-e.

The Alleghany Corporation negotiations were handled by both of us with Mr. Young, Chairman of the Board; Mr. Bateman, one of his advisers, and counsel, Mr. Teitelbaum. I think that at one meeting Mr. Carl Newton appeared before he became President of the Chesapeake & Ohio.

The negotiations with the debtor were conducted by both of us, and the principal representative was Mr. T. C. Davis, Chairman of the Executive Committee of the debtor. Judge Pierce was also in on some of those negotiations as counsel.

There were some other negotiations early in the proceeding with some of the smaller issues. We had a Plan at one time that had been largely agreed upon, but that fell through. We did have some adherents among the smaller issues to this first Plan which we did not have time to get on this later Plan, so they are not involved in the final agreement and I will not mention them, unless you are particularly interested.

I think that covers everybody that I can think of. Probably there are some more who were involved in an occasional way, but those were the principal negotiators.

Q. Do I understand you correctly, then, that you haven't negotiated with the Cairo & Thebes, the Boonville and St. Louis Southern, the Central Branch Union Pacific, the Little Rock—

A. Not in connection with this latest Plan; we had some negotiations with the Cairo & Thebes, Central Branch Union Pacific early in the proceedings, but when that Plan fell through, we had to start over again and arrive at this Plan. The time element became so pressing that we did not go on and try to complete negotiations with the smaller issues.

Q. So you don't know whether any of those issues consent or not to this Plan, do you?

A. No, I don't know what the position of those smaller issues is.

Q. And did you confer with the independent stockholders of the NOT&M? By that I mean that portion of the stock that is owned by the general public?

A. No, we did not confer with anybody representing that.

Q. What about the NOT&M Income Bonds?

A. They are represented by the same committee that represents the First Mortgage Bonds. They have a number of the Incomes deposited with them, and when we were conferring with Mr. Adkins, we also were conferring with representatives of the Income Bonds as well as the Firsts.

Q. As I understand your testimony in regard to the NOT&M First Mortgage Bonds and also the Income Bonds, all of your conferences have been solely with Mr. Adkins; in that correct?

A. They have been principally with Mr. Adkins. I think there were some conversations with Mr. Walker, the Chairman of the Committee, but very limited. Mr. Adkins has been practically their sole representative, and I would say a very able one.

Q. There is no question about that. Have you personally conferred with Mr. Walker or any member of the Committee? A. No, I have not.

Q. As far as the First & Refunding Bonds are concerned, I understand that you conferred with the Stedman Committee, is that right? A. Yes.

Q. And their counsel? A. Yes.

Q. Did you confer with any other holders or owners of bonds not deposited with the Stedman Committee?

A. Not as such. Of course, I believe Mr. Sturgis said this morning that his bank holds about $2,000,000. of the First & Refunding Bonds, but we did not try to find other holders than those deposited with the First & Refunding Committee.

There is one other group that I neglected to mention. There is an independent committee with whom we had one meeting after the Plan was pretty well along. I can't tell you the names of the members of that committee because I just met them once. However, I can get them for

you. I understand that they represent independent holdings of First & Refunding Bonds, Convertibles, Serial 5¼s, General Mortgage 4s and possibly some other issues. I think perhaps I ought to get the names of that committee and the issues that were represented on that committee; but Mr. Sturgis and I did appear before that committee and got the concurrence of that committee to the Plan, although they are not a party to this case and are not represented by counsel. However, I can find out their names and the issues that they held and be glad to put that in the record.

Q. Are they going to appear here and announce their position, do you know?

A. I don't know; they have never intervened in this case, so far as I know. However, I will say this: That they were one of the parties who fought the Commission Plan very hard and urged people to vote against the Commission Plan.

We conferred with them because of the fact that they had originally opposed the Commission Plan. I understand that they all voted their bonds against the Commission Plan at the time of the voting.

Q. In regard to the Stedman Committee, do you know how many bonds they represent, Mr. Wyer?

A. I don't know exactly; I am sure they will be glad to tell you. I think it is somewhere around $65,000,000. or $70,000,000.

Q. Do you know what percentage of that is insurance company bonds? A. No.

Q. Do you know how many bonds the Walker Committee for the NOT&M represents?

A. No, I don't know; I think that is all in the record in this case as of earlier dates. As I say, I am sure that the representatives of these committees would be glad to tell you how many they do represent. I think they file reports with the New York Stock Exchange at intervals, showing what certificates of deposit they have outstanding and I think there is an arrangement in the First & Refunding Committee, where they have other bonds for which they do not issue certificates of deposit, to act with the Committee.

Q. Do you know whether they represent a majority or a minority of the bonds?

A. I think both those committees probably represent a minority of the bonds.

Mr. Kitchel: Mr. Director, at the hearing on confirmation of the Plan, a paper was filed showing the holdings of the various committees that were at that time opposing the Plan. It is already in the record.

Mr. Biggs: Isn't it true, Mr. Kitchel, that there has been a substantial decrease in the holdings of the Stedman Committee, for example, since that time?

Mr. Conroy: I would not say substantial, no.

Mr. Biggs: 5 per cent?

Mr. Conroy: Not as much as that; maybe it was one or two per cent. If you wish to know, I can get the exact amount for you and have it for you tomorrow morning.

Mr. Biggs: Haven't you filed with the Securities and Exchange Commission statements showing a reduction of more than 5 per cent. on several occasions?

Mr. Conroy: Yes, but not since the statement that Mr. Kitchel referred to.

Mr. Biggs: What was the date of that statement?

Mr. Kitchel: The date of the hearing on the confirmation of the Plan, whatever date that might have been.

Mr. Biggs: Was that July, 1940?

Mr. Kitchel: July, 1943, I think; it was the 17th or the 16th of July, 1943.

Mr. Biggs: You are talking about the hearing before Judge Moore?

Mr. Kitchel: On confirmation, yes; that is what I said in the first place.

Mr. Conroy: If the approximate figure will do, I think our committee now represents about $66,000,000. I can get the exact figure for you tomorrow if you wish.

Mr. Biggs: I would like to have it.

Q. (By Mr. Biggs) You negotiated with the Delafield Committee. Do you know whether they represent a majority of the bonds? A. I don't believe so.

Q. They haven't even got deposit of the bonds in that committee, have they? A. I don't believe they have.

Q. Do you know under what right or authority they represent anybody?

A. No, I am not familiar with their arrangements with the bondholders. I know they have been represented in this proceedings for the last ten years.

Mr. Kirshbaum: The petition shows that this gentleman or his client owns only 43 shares of the common stock of the NOT&M Railroad—

Director Sweet: If he owns one share, he is entitled to proceed.

Mr. Kirshbaum: But there are more important interests, I think, Mr. Director.

Mr. Biggs: We represent other interests besides that.

Director Sweet: You may proceed, Mr. Biggs.

Q. (By Mr. Biggs) Now, in regard to the treatment of the General 4s, the General Mortgage 4% Bonds, as I understand from your Plan, they receive common stock for their General Mortgage Bonds; is that correct?

A. Yes, Class A Common.

Q. Class A Common Stock, and they receive, on the basis of $100. per share, that Class A Common Stock for the amount of their principal and interest?

A. That is correct.

Q. Do they receive anything else besides that under the terms of your Plan?

A. No, they receive the rights that go along with that; they join in the appointment of one of the Reorganization Managers.

Q. The Committee does that; the bondholders themselves do not, do they?

A. That is correct, the committee representing—

Q. But John Smith, bondholder, or Fred Wilson, whom I happen to represent—all he receives under the terms of

your Plan is Class A Stock on a hundred dollar per share basis for his mortgage claim?

A. Yes, I think that is correct.

Q. The General Mortgage Bond—under the terms of his General Mortgage Bond he was a creditor of the Missouri Pacific? A. That is right.

Q. And he is changed from a creditor to a stockholder?

A. That is right.

Q. Your Plan also provides for the participation of the Convertible 5½s, does it not? A. Yes.

Q. They receive securities under the Plan? A. Yes.

[Q. They receive securities under the Plan? A. Yes.]

Q. And they, in the priority of lien, rank below the General 4s as creditors in the Missouri Pacific System?

A. Yes. Of course, you understand that in my testimony I made quite a number of explanations as to why they were ranked that way and the considerations that led their representatives to agree to accept that ranking.

Q. But the point I make, so that there will not be any question about it, is that they rank below the General 4s in the priority of lien, the Convertibles do?

A. Do you mean in the Plan or absolutely?

Q. Well, forgetting about the Plan, in the Missouri Pacific System as it is today.

A. As to all of the assets which secure the General Mortgage, the Convertibles rank junior in lien. Now, there is this highly controversial question as to whether there are free assets, what they are and how much they amount to and what claim the Convertibles have on them; but as to the bulk of the assets of the system, they do rank junior to the General 4s.

Q. And they do participate in the Plan? A. Yes.

Q. Passing from that to the 5¼s; that is, these Missouri Pacific secured Serial 5¼% Bonds. As I understand from your testimony, the allocation of securities to that particular class of creditors followed the same basis as in the old Plan of Reorganization?

A. We tried to make the relative treatment of the 5¼s, with respect to the other classes of securities, particularly the Generals and the I-GN Adjustments, adhere to the relative treatment provided in the Commission's Plan.

The absolute treatment was not the same because, of course, they got only common stock in the Commission's Plan and we offer them partly Class A Common and partly Class B Common, which are different securities than provided in the Commission's Plan. However, their relativity of treatment was, we think, maintained as set up in the Commission's Plan.

Q. The secured 5¼s have as collateral ten shares of the Common Stock of the New Orleans, Texas & Mexico Railroad for each thousand dollar bond, is that correct?

A. Yes.

Q. And the total amount of stock deposited to secure this issue is 80 per cent. of the Common Stock of the New Orleans, Texas & Mexico Railroad?

A. Approximately so, yes.

Q. In considering the treatment of the Serial 5¼s and the NOT&M Common Stock in the old Plan; that is, the original I. C. C. Plan, a claim in the Missouri Pacific in principal amount of approximately $10,000,000, in which, according to the statements, were accrued interest amounts to about $16,000,000, was taken ahead of and considered ahead of the treatment of those two classes of securities; is that correct?

A. I would think that was correct; I think a reading of the Commission's Plan would lead to that conclusion, yes.

Q. In allocating those securities to those two classes in your proposed Plan, did you take that claim into consideration or not?

A. I would say we did. That is one of the things that I meant when I said we maintained the same relativity of treatment between the 5¼s and the other classes of securities. I think that we took that claim into account just to the same extent that the Commission took it into account in its Plan.

Q. I understand by that that you did.

A. Yes, I would say that we did. You can't answer that categorically because I don't recall that the Commission states categorically that they did in their Plan, and we followed the Commission's Plan as to relativity of treatment. However, as I say, I think, in reading the Commission's Plan, you would be correct in arriving at

the conclusion that they did take it into account and I think, therefore, that we took it into account to the same extent. With that qualification, I would say that we did take it into account.

Q. Let us assume that that claim is invalid and cannot be considered—

Mr. Homire: I would like to register an objection to this line of [questionng] because the validity of this claim has already been passed upon by the Commission under Section 20-A of the Interstate Commerce Act.

It was passed on by the Commission in its first Plan. No question was raised with respect to it in the District Court, and the matter went clear to the Circuit Court of Appeals without any question ever being raised challenging the validity of these notes as they were originally approved by the Comission under Section 20-A.

Mr. Biggs: If your Honor please, this particular claim in question has never been allowed by the District Court in the City of St. Louis, Missouri, the Court of Bankruptcy with jurisdiction to allow or deny claims, and if it had not been for the press of time between the notice of this hearing and—why, a proceeding would have been filed by my clients to set aside and reject that claim.

I will take this particular moment to notify all parties present that as soon as possible such an action will be taken.

Mr. Homire: That strengthens my objection, if your Honor please, because until his action is brought and maintained and allowed, I think the Commission must proceed on the assumption that the notes are valid.

Director Sweet: I don't think you should question him any farther in this proceeding on that, Mr. Biggs.

Mr. Biggs: They have never been allowed.

Director Sweet: We cannot allow them or disallow them; that is the Court's business.

Mr. Biggs: This witness has taken that claim into consideration—

Director Sweet: He stated how he had treated it. If

there is something wrong with the claim, you go to court about it. Don't bother us any more with it here.

Mr. Biggs: Is the objection to my question sustained?

Director Sweet: Yes.

Mr. Biggs: I would like to offer to prove, then, by this witness that if he was allowed to testify, that if this claim in question, to wit: the claim of the Missouri Pacific Railroad Company against the New Orleans, Texas & Mexico Railroad Company, is disallowed, then the treatment and consideration of the secured Serial 5¼s under the proposed Plan and the treatment of the Common Capital Stock of the New Orleans, Texas & Mexico Railroad Company is inequitable and unfair.

Mr. Homire: I renew my objection to this offer of proof.

Director Sweet: It is not necessary; your objection is sustained and the offer of proof is noted as overruled. Will you proceed, Mr. Biggs?

Q. (By Mr. Biggs) In regard to your Exhibit 895, why did you omit from this exhibit the Missouri Pacific Serial 5¼% Bonds and the collateral deposited to secure same?

A. Because this is simply an exhibit of the collateral securing this short term debt which was created shortly prior to the bankruptcy of the Missouri Pacific and did not purport to cover all of the collateral security of the Missouri Pacific, but just the items included on that exhibit.

Q. The Serial 5¼s is the same class of debt as these; is that correct?

A. No, we haven't so considered it throughout this proceeding. It is true that it is secured by certain collateral, but it is in existence for quite a long time prior to the bankruptcy and was not in the nature of short term financing such as these items were.

Q. In treatment of these obligations and in treatment of the Serial 5¼ obligations, it is a matter of valuing the collateral. The obligation itself is of the same character, is that not correct?

A. I think you have to value the collateral in connection with any collaterally-secured obligation.

Q. Does the maturity make any difference in determining treatment?

A. Not in a Plan of Reorganization, I don't see that it does.

Q. So far as any Plan of Reorganization is concerned, these are on the same basis? The only difference between the Serial 5¼s and those securities shown in your Exhibit 895 is the difference in the type of collateral, is that correct?

A. No, I don't think that was what I said. I said the difference was that these Serial 5¼s were relatively long-term financing when they were issued. These other three classes of debt covered in Exhibit 895 were short-term financing entered into in 1932, none of them earlier than 1932, at a time when the Missouri Pacific was in financial difficulties and in an attempt to keep the Missouri Pacific out of bankruptcy. They were a different type of financing; they were not issued to the public or distributed to the public. They were not underwritten by any banking house. They were definitely short-term current financing, and an entirely different type of security than the Serial 5¼s.

Q. What securities does the Alleghany Corporation own?

A. I don't know exactly; I understand they own about $11,000,000. of the Convertible Bonds, or a little less than 25 per cent. of the issue, and I think they have a very small amount of Preferred Stock—just a few shares, and quite a large block of Common, not a majority of the Common, but I think possibly 40 per cent. of the Common.

However, I think the Alleghany Corporation will be glad to give you the exact figures on those if you want them, but that is my understanding of what they own in this picture.

Q. How do they participate in this Plan?

A. Well, their Convertible Bonds get, as I said this morning—the Convertible Bonds as a whole get about 20 per cent. of the voting stock, which would give the Alleghany Corporation less than 5 per cent. of the voting stock. Then they get warrants for whatever their holdings of Preferred and Common Stock are.

Q. Do they participate in any other way?

A. Well, they get the joint naming of one of the Reorganization Managers and I think they have the right of nominating two directors on the original Board.

Q. So they participate as a creditor for all of the securities they own, and in addition thereto they join in the naming of the Reorganization Managers, and they also name two of the first Board of Directors?

A. I think they nominate them, but I think there is a right of veto to those nominations. I don't think they can name them absolutely.

Q. They have the right to nominate them?

A. That is right.

Q. Now, we were discussing earlier this question of what you do with these funds when options are exercised on these warrants. You stated that the junior creditors were the ones that were demanding that this money be used to purchase the present outstanding Class B Stock.

A. Presently to be outstanding Class B Stock.

Q. Was the Alleghany Corporation the one that was making that demand?

A. They were one of them. I think, as a matter of fact, Mr. Sturgis was anxious to have that in connection with the Convertible Bonds which his bank owns. I think he first suggested it. The Alleghany Corporation also felt that that was the way it ought to be. They went along with it.

I would like to point out that Mr. Sturgis was in a very good position to be a mediator here because his bank owned First & Refunding and Convertibles, and, therefore, they were the two ends of the major dispute in this case, so he had interests on both ends which put him in a good position to appreciate both sides of the controversy.

Q. Prior to the bankruptcy the Missouri Pacific System was controlled by Alleghany Corporation, is that correct?

A. Yes.

Q. For how many years prior to bankruptcy was that true? A. Three years.

Q. Are you familiar with the line of cases headed by Taylor v. Standard Gas, of the United States Supreme Court, which holds that where a parent company is guilty

of—the parent company owns and controls a subsidiary and is guilty of wrongdoings, that it cannot participate in a Plan of Reorganization?

Mr. Teitelbaum: I object to the form of the question.

Director Sweet: We will ask the legal questions of counsel in our briefs or in our arguments. Let us confine our questions of this witness to technical matters, engineering and accounting.

Q. (By Mr. Biggs) Did you consider whether Alleghany should be allowed to participate in this Plan or not on account of past history?

Director Sweet: I don't think that this is a fair question. I will overrule it. Have you got any proof? We will let you submit that, but I don't think we are interested in this witness' opinion on that question.

Mr. Biggs: This is the man who negotiated the Plan, your Honor.

Q. (By Mr. Biggs) You participated as a witness, did you not, Mr. Wyer, in the investigation by the Committee of Interstate Commerce of the Missouri Pacific System?

A. Yes.

Q. Are you familiar with the report of the Senate Committee in regard to the [Missuri] Pacific System intercompany dividends and advances prepared by Mr. Wheeler and Mr. Truman of the Senate?

A. I don't know that I am.

Q. You were treasurer of the Missouri Pacific up to the time of the bankruptcy?

A. Yes, I had been treasurer for about three and one-half years prior to the bankruptcy.

Q. And you became treasurer in 1929? A. Yes.

Q. Were you connected with the Missouri Pacific before then? A. Yes.

Q. In what capacity?

A. Assistant to the Chairman of the Board of Directors.

Q. The Missouri Pacific System, at the time of bankruptcy, consisted of 79 subsidiaries, did it not?

A. I think it did.

Q. The New Orleans, Texas & Mexico and the I-GN were the principal subsidiaries?

A. Yes, I don't know that those were all subsidiaries; I think a good many of them were ranked as affiliated companies. I don't believe it had 79 subsidiaries. Perhaps it did.

Q. There is no question about the I-GN and the NOT&M being subsidiaries, is there? A. No question about that.

Q. In the years 1926 through 1931, the Missouri Pacific, the NOT&M declared dividends of $1,038,000. per year—

Mr. Kitchel: I object to this line of testimony as being entirely irrelevant.

The Witness: If I may make a comment about this line of testimony, it has all been very fully covered in this record by myself in the first hearings before the Commission, in which I submitted exhibits giving the detail of these advances, the dates they were advanced and the purposes for which they were advanced, and discussed them in very great detail. That is all in the record, Mr. Director.

Director Sweet: I think that is true. I don't want counsel to be prevented from developing anything that he may have that is really material to our inquiry here, but I have difficulty in seeing that you are getting anywhere so far.

Mr. Biggs: The purpose of this whole line of inquiry is this: We are objecting to the Alleghany Corporation participating in this Plan of Reorganization. The witness has admitted that the Missouri Pacific System was a subsidiary of Alleghany.

The law of the land, in my humble opinion, is that if we prove that fact and acts that were detrimental to the creditors and other stockholders of the Missouri Pacific System, that it is the duty of this Commission to eliminate the claim of Alleghany from any participation.

Director Sweet: Haven't you got the basis for making that contention now? Don't you think you have laid the basis for that contention.

Mr. Biggs: I have not laid any facts.

Director Sweet: Well, the facts regarding the relation of the Alleghany Corporation and Missouri Pacific in the matter of earnings and dividends and what-not are in the record here, or they are available in public documents to which you can refer.

Mr. Biggs: Let me ask this question to shorten this thing. Can I introduce into evidence this report of the Senate Committee?

Mr. Kitchel: That, your Honor, we object to. The full Commission has already ruled on the admission of the reports of the Senate Committee in the past.

Director Sweet: When?

Mr. Kitchel: Mr. Brandwen tried to bring them in before the Commission. We had a dispute at great length. Perhaps I was wrong in saying the full Commission, but the members of the Commission who were sitting at that time is what I meant, Commission Meyer and Division 4.

Director Sweet: I think that that has been excluded.

Mr. Biggs: There was no claim at that time, from my knowledge of the record, which is not nearly as extensive as some of the other parties here, that it was offered for this purpose.

Director Sweet: I think it was. I think Mr. Brandwen represented some interests in the proceeding and I think his approach was very similar to yours. That was also his concern, that prior management should have nothing to do with the reorganization. I think we have been over that question in the earlier stages. It was so long ago that I had forgotten about it until reminded of it.

Mr. Kitchel: Mr. Director, the admission of that evidence before this Commission was not proved in facts here. That would have to be proved by witnesses. We object to this line of testimony.

Mr. Teitelbaum: I should like to add the further objection that, while this is not the place to indulge in legal argument, the concept of the law, as stated by Mr. Biggs, is in complete variance with my understanding of it.

Director Sweet: We will not argue that.

Mr. Biggs: The purpose of asking for the introduction was merely to shorten this examination. I will have to proceed, then.

Director Sweet: We will not go any farther with that line of inquiry. The Commission has had a chance to consider it heretofore and has ruled against it in this case.

Mr. Biggs: I will offer in evidence, if you want, because I happen to have Mr. Brandwen's memoranda on this point—

Director Sweet: We can't receive that, either.

Mr. Biggs: The point I want to make is this: While the claim of Alleghany was attacked in the original hearing before the Commission, it is true, it was never attacked on the theory that I am attacking it. That is the so-called "Instrumentality Rule," or the rule of law in regard to a parent and a subsidiary corporation.

Director Sweet: That is a legal argument you can make at the proper time. We will get to that later. We will have some briefs and oral argument in this case and I think you have a sufficient basis now on which to make those contentions as fully as you desire to do it.

Mr. Biggs: This is a hearing upon a new Plan of Reorganization.

Director Sweet: No, I do not consider it as such.

Mr. Biggs: I certainly should have the opportunity to develop any evidence and substantiate any theory that I wish to advocate before the Commission.

Director Sweet: Have you any other line of inquiry? We will not spend any more time on this particular line of inquiry. If you have anything else you want to develop, go ahead.

Mr. Biggs: Do I understand that you are ruling against my proving by this witness, or attempting to prove by this witness, that the Alleghany Corporation, while it was the parent as far as the Missouri Pacific system was con-

cerned, was guilty of many fraudulent and wrongful acts? Do I understand that you are precluding me from proving by this witness those facts?

Director Sweet: Yes, I think so, if for no other reason than it is not proper cross-examination. I think we will just preclude your examination of this witness any further along those lines.

Mr. Biggs: Then I will have to make an offer of proof.

I will offer to prove by this witness, if allowed to testify, that for the years 1926 through 1931 the Alleghany Corporation, through its subsidiary, the Missouri Pacific, forced the Missouri Pacific subsidiary, the New Orleans, Texas & Mexico Railroad Company, to pay dividends of $1,038,000. for each of those years; that the New Orleans, Texas & Mexico Railroad Company itself never earned sufficient to pay, in any one of these years, said dividends.

In fact, in three of the six years, the New Orleans, Texas & Mexico Railroad showed a deficit after fixed charges. For the six-year period considered as a whole, this stated net income totaled a bare $90,000. as against dividend declarations totaling $6,300,000; that even this $90,000. net income was overstated in the records of the NOT&M; that during that six-year period the NOT&M did not properly charge the proper amount for depreciation and that if the proper depreciation had been charged over that six-year period, it would have amounted to an additional sum of $411,000.

Therefore, for the six-year period, the NOT&M operated at a deficit of $321,000. However, during the period, as I have previously stated, the evidence will show that they paid dividends of $6,300,000.

I will show by this witness that these dividends were paid as a result of advances by the Missouri Pacific, which was directed to make these advances by the Alleghany Corporation, and that these advances are a substantial part, totaling over $4,000,000, of the present claim of the Missouri Pacific against the New Orleans, Texas & Mexico Railroad Company.

I will prove by this witness that the Alleghany Corporation, during this period of time, was in need of income

to pay off on its obligations and that it secured that income by forcing its subsidiary, the Missouri Pacific, to pay dividends right up to the time of bankruptcy.

Mr. Adkins: How does Mr. Biggs know he can prove any of these things by Mr. Wyer?

Director Sweet: Let him complete his offer. Can you expedite this offer a little, Mr. Biggs?

Mr. Biggs: I might expedite it by making an additional offer tomorrow morning, at the beginning of the day.

Director Sweet: Have you completed your offer, Mr. Biggs?

Mr. Biggs: I have not.

[Dirfector] Sweet: Can you type your offer and let the reporter have it?

Mr. Biggs: I am from St. Louis and do not have any secretary with me, and I have no ability myself on the typewriter.

Director Sweet: Well, we cannot spend time here on this method of proceeding. You have got to get it in shape or else finish up your offer very quickly. We must get along on something else.

Mr. Biggs: I will also offer to prove by this witness that the Alleghany Corporation forced and directed the Missouri Pacific Railroad Company to purchase certain terminal railway properties from another subsidiary of the Alleghany Corporation; that while the contract of the railroad company with the other subsidiary of Alleghany had a provision in it that it was subject to the approval of the Interstate Commerce Commission, notwithstanding that provision, the Missouri Pacific made a number of payments on the purchase price in advance of such approval and, further, that under the contract it was liable either on the purchase price or as a guarantor against damages, in the event of the disapproval of the Interstate Commerce Commission, in the sum of $16,000,000.

Director Sweet: How much longer time do you intend to take for this kind of an offer?

Mr. Biggs: I have one other subject to cover after this.

Director Sweet: How long will it take you?

Mr. Biggs: Until about six o'clock.

Director Sweet: Then we will not hear any further offer at this time. We will let you complete your offer before we adjourn, but we are not going to spend any more time on that offer right now. Have you any other cross-examination?

Mr. Biggs: Yes.

Q. (By Mr. Biggs) Is there any provision in your Plan of [Rerganization] for a sale of the collateral securing the Secured 5¼% Bonds?

A. I think there is a provision in here in connection with sale. I don't know whether it applies to the collateral behind the 5¼s or not. I think Paragraph 30 of the Plan, appearing on page 73, covers the question of execution of the Plan by sales. I will let that provision speak for itself; I will not attempt to interpret it, to say whether it applies to the collateral of the 5¼ or not.

Q. And if it is not in that paragraph, then there is no provision?

A. I don't know of any other place in the Plan where it would be if it isn't in that paragraph.

Q. Now, in regard to the first Board of Directors, the stockholders, under your proposed Plan, have nothing to say about that; is that correct?

A. That is correct, the old stockholders have nothing to say.

Q. And the new stockholders have nothing to say?

A. Not as such, except that a good many of the people who have the right of nominating these directors will be new stockholders in substantial amount.

Q. Well,—

A. In fact, they represent the largest new stockholders whom we know anything about.

Q. But they do not in any event represent a majority of any particular class, ou side of Alleghany?

A. I don't think even Alleghany represents a majority of any particular class.

Q. But the Preferred Stock, the Class A Stock and the Class B Stock, who are supposed to have the voting rights under your Plan, as stockholders—whoever receives this new stock will have no right of voting on the first Board of Directors? A. No, they will not, not as stockholders.

Q. As long as this voting trust continues, that same thing holds true? A. Yes.

Q. And this Board of Directors, during that period of time, can issue new and additional series of mortgages on the property?

A. It has the power of the Board of Directors and, subject to the limitations placed upon it in this Plan, it can do those things.

Q. And under the provisions of the Plan, it would have the right to issue new mortgage bonds?

A. Yes, with certain restrictions.

Q. And the voting stockholders would have nothing to say about it?

A. I think that is right, unless they had some legal case which they could prosecute.

Q. Unless there was some fraud or something of that kind? A. Something that gave them a case in law.

Director Sweet: Now, Mr. Biggs, we will have to suspend at this point.

(Memorandum relating to Supplemental Report of Interstate Commerce Commission, Third Supplemental Report of Interstate Commerce Commission and Third Supplemental Order of Interstate Commerce Commission.)

There is printed in a separate volume heretofore published by the Trustee, the Interstate Commerce Commission Supplemental Report, dated July 4, 1944; Third Supplemental Report of Interstate Commerce Commission, dated October 9, 1944; and Third Supplemental Order of October 9, 1944, constituting modified plan of reorganization.

(Petition of Ernest Lee Foley for Leave to Intervene and for Show Cause Order.)

(Filed July 6, 1944.)

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

The petition of Ernest Lee Foley respectfully shows as follows:

1. Petitioner, Ernest Lee Foley, is the holder and owner of $25,000, par value, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds of various maturities. He is a resident of Alpena, in the State of Michigan.

2. This petition is submitted in support of a motion for an order of this Court directing the parties in the above-entitled proceeding to show cause why an order should not be made granting petitioner leave to intervene and to file a certain petition, a copy of which is annexed hereto, marked Exhibit A, and made a part hereof, with the same force and effect as if fully set forth herein.

On Information and Belief,

3. Missouri Pacific Railroad Company (hereinafter referred to as "MOP") is and, at all times hereinafter mentioned, was a railroad corporation duly organized and existing under the laws of the State of Missouri.

4. New Orleans, Texas & Mexico Railway Company (hereinafter referred to as "NOTM") is and, at all times hereinafter mentioned, was a railroad corporation duly organized and existing under the laws of the State of Louisiana. Approximately 94% of the capital stock of NOTM has been owned of record by MOP since 1925.

5. On or about March 31, 1933, MOP filed a petition herein seeking a reorganization under Section 77 of the National Bankruptcy Act, as amended. At the same time, MOP directed and caused NOTM to file a similar petition herein under the aforesaid section and for the same purpose.

6. At the present time and since about January, 1936, Guy A. Thompson, by order of this Court, has served as sole trustee of the respective properties of MOP, of NOTM, and of their respective subsidiaries.

7. MOP has heretofore filed a claim in these proceedings against NOTM for $10,565,226.78 for moneys which MOP alleges it advanced to NOTM from 1928 to 1932 inclusive.

8. Secured Serial 5¼% Bonds of MOP are now outstanding in the principal amount of $12,140,000 and are secured by MOP's pledge of 121,460 shares of the capital stock of NOTM. Said bonds were issued on December 1, 1926, in order to enable MOP to pay the cost of acquiring said capital stock of NOTM. MOP has defaulted in the payment of interest and principal of said bonds and in consequence, pursuant to the terms of the indenture under which said bonds were issued, the owners and holders of said 5¼% Secured Serial Gold Bonds have become and continue to be the equitable owners of said capital stock of NOTM.

9. In violation of its obligations under said pledge MOP from time to time withdrew large sums of money from NOTM and its subsidiaries and operated the business and affairs of NOTM solely for the benefit of MOP and those in control of MOP and to the great disadvantage of NOTM, its subsidiaries and its security holders, all of which more fully appears in said petition marked Exhibit A and annexed hereto.

10. The aforesaid claim filed by MOP against NOTM is invalid; and further, MOP is required to account to NOTM, its subsidiaries, and its security holders, for large sums of money due to NOTM in consequence of its illegal management by MOP, all of which more fully appears in said petition marked Exhibit A and annexed hereto.

11. The time in which to file objections to claims filed in the above entitled proceeding, as fixed by order of this Court, has not yet expired.

12. Protection in these reorganization proceedings of the rights of the holders of the said 5¼% Secured Serial Gold Bonds, including their rights as equitable owners of

the said capital stock of NOTM, requires the payment by MOP of the large sums in which it is indebted to NOTM and the rejection of the said claim of MOP against NOTM. The judicial determination of the matters presented in the annexed petition is an indispensable prerequisite to the exercise of an informed judgment as is required by the National Bankruptcy Act, as amended, with respect to the fairness or equity of any treatment proposed to be given to said 5¼% Secured Serial Gold Bonds in any proposed plan of reorganization or any other settlement of the rights of said bondholders. The neglect or failure of other holders of the said 5¼% Secured Serial Gold Bonds, or their representative or representatives prior hereto to petition for the adjudication of the matters set forth herein cannot deprive petitioner of his right to have said matters determined since even waiver, acquiescence or approval by other holders of said 5¼% Secured Serial Gold Bonds cannot so operate, and there has been no waiver, acquiescence or approval in these proceedings.

13. No application has heretofore been filed in the above entitled proceedings for similar relief.

Wherefore, petitioner respectfully prays

(a) That an order be granted directing persons interested in the above entitled proceeding to show cause why an order should not be made granting leave to petitioner to intervene specially in the above entitled proceeding in order to assert and protect his rights, and granting leave to file the annexed petition, marked Exhibit A, or one substantially similar thereto.

(b) Such further and different relief as to this Court may seem just and proper.

ERNEST LEE FOLEY,
Petitioner.

WM. H. BIGGS,
DUNBAR & BIGGS,
Security Building,
St. Louis 2, Missouri.

WILLIAM H. BIGGS,
Of Counsel.

Verification.

State of Michigan }
County of Alpena } ss.

Ernest Lee Foley, being duly sworn, deposes and says: that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition, and knows the contents thereof; that the same are true as stated, except as to matter and things expressly stated to be on information and belief, and that as to those matters and things, he believes them to be true.

ERNEST LEE FOLEY.

Subscribed, in my presence, and sworn to before me by the affiant above named, this 6th day of July, 1944.

(Seal) CLARENCE H. ZELLER,
Notary Public, Alpena County, Mich.
My Commission Expires April 25, 1945.

(Answer of Missouri Pacific Railroad Company, Debtor, to Petition of Ernest Lee Foley for Show Cause Order.)

(Filed July 21, 1944.)

Missouri Pacific Railroad Company, Debtor, in the above entitled proceeding, in answer to the petition of Ernest Lee Foley stated to be submitted in support of a contemplated motion for a show cause order, respectfully shows:

I.

1. It denies any knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph numbered 1 of said petition.

2. Upon information and belief it denies the allegations contained in paragraphs numbered 9, 10 and 12 of said petition.

II.

3. For a further and affirmative answer to the petition, the Missouri Pacific Railroad Company, Debtor, respectfully shows:

Missouri Pacific Railroad Company and New Orleans, Texas & Mexico Railway Company have been before this Court and before the Interstate Commerce Commission in the reorganization proceeding under Section 77 of the Federal Bankruptcy Act, as amended, for more than eleven years in the course of which proceeding the matters here sought to be brought in issue again have twice been considered and decided by the Interstate Commerce Commission adversely to petitioner's claim. Such determination by said Commission had the approval of this Court the only time it has been before the Court. A plan of reorganization of said railroads promulgated by the Interstate Commerce Commission and approved by this Court July 11th, 1941 later because of changed [contitions] the proceeding was, on July 29th, 1943, referred back to the Interstate Commerce Commission which held a hearing thereon at Brooklyn, N. Y. October 19th-21st, 1943, inclusive, and has this afternoon issued its supplemental report.

4. Whether or not this intervention should be allowed is entirely within the discretion of the Court, (See Section 77, Section 13 (c) of the Bankruptcy Act.) A main purpose of Section 77 is to bring about "* * * a reasonably expeditious reorganization of the debtor" (Section 13 (g).

To grant this petition for a re-consideration of an issue based upon a question twice decided against the claim of petitioner would be contrary to the purpose of the statute. This proceeding has now been pending for more than eleven years and the inaction of the petitioner over a long period of years during which death has removed some of Debtor's officials whose evidence is necessary adequately to inform this Court of facts heretofore presented to and considered by the Interstate Commerce Commission in reaching its decisions above referred to.

Such laches alone should convince the Court that the proper exercise of its discretion should be the denial of the petition.

If any other course were taken thereby setting a precedent there would be no end to railroad reorganization. A purchaser of any security entitled to participate in the Trust Estate, at any time prior to the confirmation of a reorganization plan could by such a petition present questions even though theretofore passed upon by the Interstate Commerce Commission and so delay the proceedings indefinitely.

Wherefore Missouri Pacific Railroad Company, Debtor, prays that the petition for the show cause order be denied.

Respectfully submitted,

MISSOURI PACIFIC RAILROAD COMPANY,

By MARION B. PIERCE,
General Counsel.

Dated: July 18th, 1944.

OLIVER & OLIVER,
Himmelberger-Harrison Bldg.,
Cape Girardeau, Missouri,
Of Counsel.

Answer of Reconstruction Finance Corporation to Petition of Ernest Lee Foley.

(Filed July 21, 1944.)

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

Comes now Reconstruction Finance Corporation (hereinafter referred to as RFC), an intervener herein, and showing cause why Ernest Lee Foley should not be granted leave to intervene specially in these proceedings as prayed

in his petition herein and to file the petition annexed as Exhibit A thereto, verified June 24, 1944, and answering said first mentioned petition, respectfully shows:

I.

1. RFC denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of said petition.

2. RFC admits the allegations contained in paragraphs 2 and 3 and in the first sentence of paragraph 4 of said petition.

3. RFC denies knowledge or information sufficient to form a belief as to the allegation contained in the second sentence of paragraph 4 of said petition.

4. RFC admits the allegations contained in paragraphs 5, 6, and 7 of said petition.

5. RFC admits the allegations contained in the first sentence of paragraph 8 of said petition; denies knowledge or information sufficient to form a belief as to the allegations contained in the second sentence of said paragraph 8; and admits that the Missouri Pacific Railroad Company (hereinafter referred to as the Missouri Pacific) has defaulted in the payment of interest and part of the principal of the bonds in said petition referred to, but alleges that the consequences of such default are a matter of law and that such consequences are not correctly stated in paragraph 8.

6. RFC denies the allegations contained in paragraphs 9, 10, 11 and 12 of said petition.

7. As to the allegations contained in paragraph 13 of said petition, RFC admits that no separate application as stated in said paragraph has been filed in these proceedings, but alleges that, as hereinafter set out in more detail, the matters and things referred to in said petition have been the subject of protracted and careful investigation by the Interstate Commerce Commission and by this

Court in connection with the preparation and approval of a plan of reorganization and otherwise in connection with these proceedings.

II.

And further showing cause why the prayer of said petition should not be granted, and as and for a further answer to said petition, RFC respectfully shows:

8. These reorganization proceedings were instituted on March 31, 1933, over eleven years ago. During this lengthy period, orders have been made by this Court requiring the filing of claims within periods specified therein, which periods and the time for filing objections to all of such claims have long since expired. In accordance with the provisions of Section 77 of the Bankruptcy Act, investigations have been made by the Bankruptcy Trustee herein as to any facts pertaining to irregularities, fraud, misconduct or mismanagement as a consequence of which any of the debtors herein might have a cause of action arising therefrom against any person or corporation, and such investigations have long since been concluded and reports based thereon made to this Court. In connection with the formulation of plans of reorganization herein, the Interstate Commerce Commission and this Court have gone fully into all matters and things which would or might be claimed to be involved in the formulation of a plan, including the matters and things referred to in said petition, and all interested parties have had full and complete opportunity to be heard thereon. Upon the basis of such full consideration, the Interstate Commerce Commission and this Court have approved a plan of reorganization, and after such plan had ultimately failed of effectuation on other grounds, the Interstate Commerce Commission again held a full hearing, and under date of July 4, 1944, has handed down a supplemental report and order approving a revised plan of reorganization herein and reaffirming its conclusion that the contentions made by the petitioner in said petition are without merit. Petitioner is now seeking to reopen the record and litigate de novo issues which have heretofore been fully explored. The reopening of the record and the relitigation of said

issues at this time as prayed by said petition would be without justification, wholly inequitable, and would serve no useful purpose but on the contrary would be subversive of the purpose of Section 77 of the Bankruptcy Act to provide a means for the prompt and economical reorganization of railroads subject to said Section 77.

9. By Order No. 19, dated May 13, 1933, entered herein, this Court directed that creditors of the Missouri Pacific, the New Orleans, Texas & Mexico Railway Company (hereinafter referred to as the New Orleans, Texas & Mexico) and other debtors in these proceedings, with certain specified exceptions, should file claims prior to August 31, 1933. By Order No. 451 herein, filed February 27, 1936, provision was made for the filing within sixty days of certain additional claims, including those of RFC. In accordance with these respective orders, proofs of claim were filed by Missouri Pacific covering the advances referred to in said petition and by RFC showing $9,955,226.78 of such advances as part of its collateral. No objection has ever been filed to either of said proofs of claim, although such proof of claim of Missouri Pacific has been on file herein for over ten years and the claim of RFC for over eight years, and the appropriate time for filing such exceptions has long since elapsed.

10. In accordance with the provisions of Section 77c (9) of the Bankruptcy Act the Trustee herein reported to this Court, after investigation, regarding facts pertaining to irregularities, fraud, misconduct or mismanagement as a consequence of which any of the debtors herein might have a cause of action arising therefrom against any person or corporation. Following such report, by Order No. 453, filed herein on March 2, 1936, the Court requested the Interstate Commerce Commission to advise the Court of any such facts known to it. Neither the reports of the Bankruptcy Trustee nor the advices received from the Commission pursuant to such request purport to set out any cause of action based upon the matters and things set out in said petition above mentioned, although the Trustee and said Commission were fully familiar with such matters and things. Said reports and advices have

been on file with this Court for many years and have never been challenged by any parties to the proceedings.

11. In accordance with the provisions of Section 77 of the Bankruptcy Act, hearings with respect to the reorganization of the Missouri Pacific and New Orleans, Texas & Mexico and the other debtors herein were held before the Interstate Commerce Commission on February 4-7, 1936, February 10-13, 1936, April 14-24, 1936, March 9-10, 1937, May 4-6, 1937, June 21-23, 1937, July 26-27, 1937, and September 27-30, 1937. At these hearings full opportunity was afforded and used for the presentation of all evidence relevant to the formulation of a plan, including detailed testimony pertinent to the relations from time to time existing between Alleghany Corporation, Missouri Pacific and New Orleans, Texas & Mexico, and the other matters and things referred to in the first above mentioned petition. Following briefs and argument before the Commission, a report and order dated January 10, 1940 and an amended report and order dated April 9, 1940 were issued by the Interstate Commerce Commission approving a Plan of Reorganization for the debtors herein and in connection therewith passing upon the matters and things referred to in said petition and upon the same contentions as those now sought to be made by the petitioner therein. After full hearings and argument before this Court, on June 9, 1940 and October 7-10, 1940, said Plan of Reorganization and the determination of said questions by the Commission were fully approved by this Court. The Plan so approved having later failed of effectuation for other reasons, a further hearing with respect to reorganization of the debtors herein was held before the Interstate Commerce Commission on October 19-21, 1944 at which full opportunity was again afforded for the presentation of all evidence relevant to the formulation of a Plan of Reorganization herein, including some evidence relating to the matters and things referred to in said petition, other alleged evidence relating to such matters and things being properly rejected for reasons set forth in the transcript of said hearing. The Interstate Commerce Commission has now, by said supplemental report and order dated July 4, 1944, approved a revised plan of reorganization reaffirm-

ing it conclusions that the contentions sought to be relitigated by the petitioner in said petition are without merit.

III.

And further showing cause why the prayer of said petition should not be granted, and as and for a further answer to said petition, RFC respectfully shows:

12. Any control of the New Orleans, Texas & Mexico by the Missouri Pacific, and any mismanagement of the former by the latter, if such mismanagement existed, was necessarily made possible by and carried out through and by means of ownership of the common stock of the New Orleans, Texas & Mexico. The rights asserted by the petitioner in the petition above mentioned are asserted as, and only as, the alleged equitable owner of such common stock. Accordingly, said petitioner, claiming through and as the alleged owner of the very common stock by which the claimed mismanagement is alleged to have been carried out, does not come into this Court with clean hands and is in no position to contend that other interests should be held invalid or subordinated to his own by reason of such claimed mismanagement.

IV.

And further showing cause why the prayer of said petition should not be granted, and as and for a further answer to said petition, RFC respectfully shows:

13. In accordance with the provisions of the Reconstruction Finance Corporation Act, as amended, and with appropriate approval of the Interstate Commerce Commission, RFC made various loans to Missouri Pacific which are now in default. Said loans are outstanding in the principal amount of $23,134,800, plus substantial interest, and are secured by the pledge of important collateral. Included among said collateral are notes of New Orleans, Texas & Mexico in the principal amount of $9,955,226.78 originally given in payment of the same principal amount of the advances by Missouri Pacific to New Orleans, Texas & Mexico referred to in said above mentioned petition.

RFC became the pledgee holder of said notes, and the assignee of the advances in payment of which the same were given, bona fide and for value, and without knowledge of any of the matters and things referred to in said petition. Under these circumstances, whether or not any effect might be given to the matters and things referred to in the above mentioned petition as against the Missouri Pacific or as against any of the other parties to this proceeding, said matters and things are without effect in relation to RFC and said notes in the hands of RFC or its assigns constitute the valid, legal and binding obligations of the New Orleans, Texas & Mexico to the extent required to satisfy RFC's loans as aforesaid.

V.

And further showing cause why the prayer of said petition should not be granted, and as and for a further answer to said petition, RFC respectfully shows:

14. By its report and order dated February 25, 1933 in Finance Docket No. 9817, the Interstate Commerce Commission found that the issuance by the New Orleans, Texas & Mexico of a note or notes in an aggregate amount not exceeding $7,456,726.78 (a) was for a lawful object within its corporate purposes, and compatible with the public interest, which was necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier and which did not impair its ability to perform that service, and (b) was reasonably necessary and appropriate for such purpose. In accordance with such determination the Interstate Commerce Commission, by its said order, authorized the issuance of said note in the principal amount of $7,456,726.78 by New Orleans, Texas & Mexico. Said note was thereafter duly issued and pledged with RFC and constitutes part of the $9,955,226.78 principal amount of such notes held by RFC as set out in paragraph 13 hereof. Approval by the Interstate Commerce Commission of the issuance of the additional note in the principal amount of $2,498,500 held by RFC was not required under the provisions of the Interstate Commerce Act.

VI.

And further showing cause why the prayer of said petition should not be granted, and as and for a further answer to said petition, RFC respectfully shows:

15. In failing to assert the alleged equitable rights claimed in said above mentioned petition at any time during the eleven year course of the proceedings herein, and until after long years of effort on the part of all interested parties, a plan of reorganization is on the verge of approval and consummation herein, the petitioner has been guilty of inexcusable laches, and is equitably estopped to assert such contentions at this time. The allowance of such assertion, particularly in a court applying principles of equity, would be unfair and inequitable to the court, the Interstate Commerce Commission, and all other parties interested in these reorganization proceedings.

Wherefore, having fully shown cause and answered as aforesaid, RFC respectfully prays that the prayer of said petition be denied and that RFC may have such other and further relief as to this court may seem just and proper.

Dated at Washington, D. C. July 19, 1944.

RECONSTRUCTION FINANCE CORPORATION,
By JAMES L. HOMIRE,
Chief Railroad Counsel.

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(Transcript of Testimony and Proceedings on Petition of Ernest Lee Foley for Leave to Intervene, etc.)

(Filed January 5, 1945.)

In the District Court of the United States
in and for the
Eastern Division of the Eastern Judicial
District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

Be It Remembered: That on the 21st day of July, 1944, at 10:00 A. M., this matter of petition of Ernest Lee Foley for leave to intervene was called for hearing in the United States District Court in above District and Division, in New Federal Building, St. Louis, Missouri, before Honorable George H. Moore, Judge Court Number One. Whereupon, the following proceedings were had:

Appearances:

For Petitioner William H. Biggs, Esq. Max Brandwen, Esq.

For Debtor Russell L. Dearmont, Esq. Marion B. Pierce, Esq.

For Reconstruction Finance Corporation James S. Homire, Esq.

For First and Refunding Bondholders' Committee W. Lloyd Kitchel, Esq.

For Chemical Bank and Trust Company Richard S. Bull, Esq.

Mr. Kitchel: May I state this, first? I do today and heretofore represent the Protective Committee for the First and Refunding Mortgage bonds. That Committee, however, expires at the close of business today. In view of that situation, twelve of the largest institutional holders of First and Refunding bonds, all of whom had deposits with this company, have formed a group, pursuant to the provision of Clause P of Section 77, to act in this matter for their own interest. The group represents 44,551,000 bonds. The group acts through an Executive Committee, all of whom were members of the former company. The Chairman of the group is Mr. John W. Stedman, as he was of the Committee; and the secretary is Eugene J. Conroy, who was secretary of the Committee. In view of the fact that upon the transfer of the life of the committee there is no proper representative of the First and Refunding bonds, we now ask leave to intervene for this group, which is called the Institutional Group of Holders of Missouri Pacific First and Refunding Mortgage Bonds. I have served a copy of the petition and notice of motion on all the parties who have intervened in this case. And I call your attention to the fact the Committee was allowed to intervene generally, and we ask that the same [privelege] be extended to this group. There is no opposition. I have a formal order which I will hand up to you now. This order provides for general intervention but also provides that the Court reserves the right to enter orders without notice, that do not affect us. (A paper is handed to the Court.)

Thank you, sir.

Mr. Biggs: If it please the Court: Your Honor, I represent Mr. Ernest Lee Foley. Mr. Foley has filed a petition for leave to intervene specially for the purpose of filing a petition. This petition for leave to intervene and notice of hearing of that petition have been served on all parties in interest; and affidavit of mailing of this notice has been filed. As far as the petition for leave to intervene, it is merely formal and merely asks leave to file a petition, a copy of which is attached as Exhibit A. This petition

which we are now asking leave of this Court to file on behalf of said Ernest Lee Foley, very briefly is as follows: It sets out that Mr. Foley is owner of 25,000 Serial 5¼ bonds, Missouri Pacific Serial 5¼ bonds. It then sets out that Missouri Pacific and the New Orleans, Texas & Mexico are in bankruptcy, and Mr. Thompson is Trustee. It then sets out that as collateral securing each thousand dollar Missouri Pacific 5¼% bond are ten shares of Common Stock of the New Orleans, Texas & Mexico Railroad Company; and sets out that the Missouri Pacific owns a majority; in fact, it owns about 95 per cent. of the Common Stock of the N. O. T. & M., of which about 80 per cent. is pledged as security for these bonds. The petition then sets out that under the secured 5¼% indenture to secure the 5¼% bonds, the following provision that the Missouri Pacific Railroad Company will not do or perform, or voluntarily permit to be done or performed, any act or thing by which the validity or priority of this indenture and the pledge hereunder of the pledged stock, as hereinbefore provided, can in any way or manner be impaired or impeached. The petition then sets forth a number of acts which we considered are fraudulent or a misfeasance. Among those—I am not going into all of them but one of them. As an illustration, we allege that the books of the Missouri Pacific show that there would be a payment to the N. O. T. & M. of a million dollars, or five hundred thousand dollars, and that the books would show no way for the N. O. T. & M. to pay a dividend, and that the books of the N. O. T. & M. show that as soon as this money was received from the Missouri Pacific that a dividend was declared and that in effect 95 per cent. of the money came right back to the Missouri Pacific. We allege a number of other acts of similar character and other character, all of which were for the benefit of the Missouri Pacific and to the detriment of the New Orleans, Texas & Mexico Railroad Company. We then pray in our prayer for relief; that the claim of the Missouri Pacific Railroad Company against the New Orleans, Texas & Mexico Railroad Company, which was originally in amount of a little over $10,000,000., which together with interest to date amounts to approxi-

mately $16,000,000., be denied and expunged from the record. This claim has been filed against Mr. Thompson as Trustee of the N. O. T. & M., but there has been no hearing on same. It was filed before the Special Master and the Special Master died, and there has been no action taken on this particular claim. We then also ask that certain bonds of the N. O. T. & M., which were owned by the N. O. T. & M. and were turned over by the N. O. T. & M. to the Missouri Pacific as collateral security for this advance by the Missouri Pacific to the N. O. T. & M., be returned to the N. O. T. & M. And we also ask for an accounting. The fundamental theory behind this petition is, of course, that there has been a fraud and that vitiates all of these acts; and second, is what is known as instrumentality rule as laid down by the United States Supreme Court in the case of Taylor v. Standard Gas case. And in that case, very briefly, the United States Supreme Court held, comparatively recently, that where the relationship of parent and subsidiary existed, and unequivocally existed in this case as we allege in our petition, and there were acts of misfeasance, malfeasance or fraud, or any other wrongful acts committed by the parent corporation against its subsidiary and for the benefit of the parent company, that this, what is known as instrumentality rule, should be invoked. And the effect of that is—and that was a bankruptcy reorganization case such as this is—that any claim of the parent corporation against the subsidiary corporation must fall to the bottom of the step ladder, so to speak, and be considered only after all other claims of all other creditors have been taken in full. And we state that this is a perfect example of why that rule should be invoked.

I do not want to argue the case here because this is merely a formal petition making leave to file it, but I do want merely to give Your Honor our theory behind the fundamental case.

Several answers have just been delivered to me by various parties opposing this petition. I frankly have not had time to examine them, but the parties are all present and I presume they will be heard in opposition, and I would like opportunity to answer.

Mr. Kitchel: Your Honor, Mr. Mayner Wallace, who is Counsel for the N. O. T. & M. Committee, is unable to be here today. He is in Chicago. Nor was Mr. Adkins, the New York Counsel. They have requested me to say that that committee takes no position in this proceeding.

Mr. Homire: If the Court please, I represent the Reconstruction Finance Corporation. May I be heard in opposition to this motion?

The Court: Yes, sir.

Mr. Homire: I have filed on behalf of the R. F. C. an answer which opposes certain of the allegations of the preliminary petition which Mr. Biggs has filed on behalf of Mr. Foley, and before I take up that answer I assume that it would be in order for him to produce proof of the controverted allegations. I do not know whether I am in order or not; but I suggest that.

Mr. Bull: Your Honor please, we represent the New York Chemical Bank & Trust Company, which is trustee for the 5¼ bonds. I would like to state for the record and tell Your Honor that that Trustee neither opposes or prefers the application or motion of the intervener.

The Court: Whom do you represent?

Mr. Bull: Chemical Bank & Trust Company as Trustees for the accrued Serial 5¼% bonds.

The Court: What have you to say, Mr. Biggs, about the suggestion of Mr. Homire?

Mr. Biggs: Mr. Brandwen, who is associated with me in this case, I would like to have answer that.

Mr. Brandwen: If I understand Counsel for the R. F. C., it is that he wants us to offer proof on the allegations con-

tained in the petition on the counter-allegations. Well, the answer has just been served and we certainly under ordinary procedure should have time to find out what the answer is and if Your Honor sets some time for the trial of the issue, then we will undertake to prove the truth of all the allegations. But, Your Honor please, this is simply an application for leave to file this petition. We do not know whether this petition will be filed until there is a decision of Your Honor, and until such time we do not see how there is any occasion for the proof being offered this morning on the allegations in the petition. So that certainly I would say that any such suggestion as that made by counsel for the RFC this morning is certainly premature. If, for example, Your Honor please, if Counsel for the R. F. C. has any reason why Your Honor should not grant this application for leave to intervene to file this petition—

The Court: There are a great many reasons set out in his answer.

Mr. Brandwen: If I should argue those reasons now, I will be pleased to if Your Honor would like me to. I thought perhaps Counsel for the R. F. C. wanted to state the reasons orally, so I might answer; but I will do whatever Your Honor wishes with respect to that.

Mr. Homire: I think it would be proper for the plaintiff or the intervening petitioner to defer until some later time the proof of some of the allegations contained in his papers. However, we are interested particularly at this time in having the record show matters which only the intervening petitioner can tell us; namely, when he acquired these bonds and what consideration was paid for them. I think that is very important. And if Counsel will stipulate as to the facts concerning that, I will not press the point. I may add, however, that the failure to allege when the petitioner acquired these bonds may be—the failure of the petitioner to say in his petition when he acquired these bonds makes the petition defective legally.

Mr. Brandwen: I can not see where there is any doctrine of law that would say that the mere failure on the part of

a plaintiff to say when he acquired the bonds makes the petition defective, when he states categorically that he owns the bonds.

The Court: You come in here at a very late time with these proceedings.

Mr. Brandwen: May I review that, but before that may I answer the points made by counsel for the R. F. C., so that there will be no question that his points are answered? One is, that we do not think it is at all material as to when the petitioner acquired the bonds or what he paid for them. However, so that there will not be any question about that, we are perfectly willing to let the Court have all the information bearing on that point. We think the only question, so far as the status of the petitioner is, in a matter of this kind, is whether he is in fact a bondholder. If he is in fact a bondholder and satisfied the Court that he is a bondholder, whether he paid X dollars or Y dollars, or Z dollars, his rights are not diminished thereby, because there is no doctrine in law which says because a man has bought bonds at one price rather than another that he is *out* in a Court of Bankruptcy.

Mr. Kitchel: We claim, as does the Reconstruction Finance Corporation, that the petition which he proposes to file is insufficient in law, in that it does not state that the Petitioner Foley was the owner of the bonds which he now owns, at the time the transaction complained of took place. Rule 23 of the Rules of Civil Procedure before the District Courts of the United States, in Paragraph B of Rule 23, provides: "In an action brought to enforce the secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refused to enforce all rights which may properly be brought by it, the complaint should be verified by oath and shall aver, first, that the plaintiff was a shareholder at the time of the transactions of which he complains". Now it is not a formal complaint, it is equivalent to an institution of an ancillary suit starting out in the form of a petition. We claim that this Rule 23 applies to

this. He says that he brings it as a shareholder in the Gulf Coast Lines, but the Trustee does not enforce the rights which might properly be brought by the Trustee. In that case he must show, to make his petition valid, that he was a shareholder at the time the transactions took place.

Mr. Brandwen: If Your Honor please, I have the utmost respect for Mr. Kitchel, and if I say that I think Mr. Kitchel entirely misconceives the nature of this petition, I am not saying this with any offense at all. This is an action that is taken by a bondholder on behalf of himself and other bondholders not being shareholders. The only [signigicance], true a very important significance, is that the right of these bondholders must necessarily be determined by the value of the collateral which these bonds have. There is an extraordinary distinction that must not be lost sight of between that question, which is simply the value of the collateral which the bondholders have and the capacity of the bondholder. The mere fact that he says in determining my rights, in the Plan of Reorganization that may be passed on by this Honorable Court, one must determine the value of the collateral, that process itself can not by any stretch of the imagination result in a transmutation of the rights and character of a bondholder into those of a stockholder. So that I respectfully suggest that the application of the particular provision of the rules, that Mr. Kitchel called to Your Honor's attention, is without any force in this matter whatsoever. We are dealing here solely with the rights of bondholders and how they shall be treated in a plan of reorganization. Now so that we might lay certain ghosts aside at once, since they have been alluded to by the R. F. C., I would like to make one point very clear. I am a little concerned and I do not quite understand why the R. F. C. here is concerned about this application. The R. F. C. under the Plan of Reorganization which was announced by the Interstate Commerce Commission the other day, the R. F. C. is going to receive bonds for the principal amount of its claim in value, or presumably for a value that will

represent par. They are going to get in cash or accrued interest on a basis that the R. F. C. finds satisfactory. Nobody wants to take anything away from the R. F. C. We believe the R. F. C. should be treated that way, and as far as we are concerned, we would have been more delighted if the R. F. C. had been paid in cash the principal amount of its claim, plus interest. We do not want to take anything away from them at all. So this petition is not designed by the remotest stretch of the imagination to impair their rights in any fashion whatsoever. This is an internal dispute. It is a dispute between the New Orleans, Texas & Mexico, which is a subsidiary of the Missouri Pacific, and the Missouri Pacific. The New Orleans, Texas & Mexico says to the Missouri Pacific Road, "You filed a claim against us; we say that claim is invalid". The R. F. C. says, "We hold a note of the N. O. T. & M. given to the Missouri Pacific". Well, let's see for a moment, and we do not think it is material for the moment, but let's assume for the moment that the point made by the R. F. C. is that it is a holder in good faith, without notice, of that note. Certainly there is no doctrine and no principle in negotiation in the whole field of negotiable instruments that will say a holder in good faith, even without notice, has any concern at all with the rights as between the maker and the payee. After all, we are not saying to the R. F. C. that the note which they hold is not properly held by them, although I say we are not saying the other thing either. We think the matter is [umimportant] because the R. F. C. we want to be paid, and a plan has been announced which I assume is perfectly satisfactory to them; but certainly they can not by any means deprive us from raising the point that as between the Missouri Pacific and the N. O. T. & M., if the advances of the Missouri Pacific to N. O. T. & M. is in fact invalid, they can not deprive us of the right of showing that it is invalid. And furthermore, there is an old doctrine that certainly is honored by centuries of practice, back as far as Lord Eldon which says, if you have two creditors and one creditor has collateral—certainly the R. F. C. which has all this marketable collateral could be protected under the old law by marshalling an equitable

distribution of the assets to go against the other collateral, and only if the other collateral is not sufficient to make the R. F. C. whole does the question arise; but I have not heard that it is necessary to establish the validity of this note and to collect on this note in order to enable the R. F. C. to be made whole because of the valuation of the collateral. And certainly from the information that I have at the proceedings, no one contends that these things are necessary to enable the R. F. C. to be made whole. At all events, I say until there is presented to this Court in proper form a full determination of the question as to the value of all other collateral, and whether recourse to this collateral is at all necessary, does the R. F. C. have any standing with respect to it. And even then, our rights as between the Missouri Pacific and the N. O. T. & M. can never be questioned. So far as the R. F. C. is concerned, that is an internal question between the Missouri Pacific and the N. O. T. & M., internal question between the maker and payee. And no doctrine of the law permits a third person, no matter how bona fide he may be, to step in and stop the assertion of your claim. Now we have also here, reference to the passage of time. Sometimes the ominous term of laches is used. Well, laches is a term of very broad scope. I have always understood that the doctrine of laches can never be invoked unless, first, the matter is not properly to be considered at the time it is being presented, or because there has been delay that the Court regards as prejudicial. If Your Honor please, in the very near future you undoubtedly will be asked to pass upon a plan of reorganization which the Interstate Commerce Commission has recently promulgated, as Your Honor well knows. And I want Your Honor to exercise indulgence with me if I say under these provisions of the Act Your Honor must be satisfied the Plan is fair and equitable and does not discriminate unfairly against any class of creditors. And the only thing that Your Honor will undoubtedly have to pass on is whether, for example, the classified 5¼% bondholders are being treated fairly under the Plan. Your Honor must, therefore, when it is called to Your Honor's attention, pass upon whether the collateral behind the 5¼% bonds is of such value so that

Your Honor can find whether the provisions for the 5¼% bonds is fair or not. Your Honor may be aided somewhat by reference in the Plan of the Interstate Commerce Commission which expressly shows the Interstate Commerce Commission assumes that this claim of the Missouri Pacific against the N. O. T. & M. is valid. If it is not valid, then of course the disposition made by the Interstate Commerce Commission with respect to the five and a quarter's can not stand that way. So that Your Honor is squarely faced by the Plan of Reorganization, which will be submitted to you by the appropriate parties in due course, to determine the question as to whether the claim of the Missouri Pacific against the N. O. T. & M. is valid, because they themselves say to the Interstate Commerce Commission, we assume the invalidity But one thing is perfectly clear, the question of the validity of the claims is not for the Interstate Commerce Commission. This is clear in the decision of the Supreme Court in the two famous cases of the Milwaukee and the Western Pacific. That makes it clear that the question passed on by the Court and not by the Commission was that anything that has happened before the Interstate Commerce Commission can not for any purpose be regarded as dealing with the question of the validity of this claim. The validity of this claim will come shortly before Your Honor for consideration, and since Your Honor has to determine that question, I do not see how anybody can argue the question of laches. After all, this is really as appropriate a time, or will be very soon, as any time for the purpose of raising this question, because any time prior thereto—it should have been raised, I am satisfied, at the time of the 1940 Plan, but since that is sent back, it is sent back as though an original proceeding, but it can be raised just as it could have been raised at that time. So that there can be no problem of laches when this particular matter must receive the attention, as I am confident it will, by this Court; because this Court can not under the terms of the Bankruptcy Act, make any finding with respect to the treatment accorded the 5¼% bondholders unless this Court must as an indispensable part in the process of determining that question decide whether in fact the claim of the

Missouri Pacific Railroad Company against the N. O. T. & M. is or is not valid, because if it is not valid the I. C. C. itself says this Plan is based on that assumption and if it is not valid there will have to be other disposition made of the 5¼% bondholders. And that is particularly true because the value of the collateral behind the 5¼% bondholders is one thing when preceded by $16,000,000. of debt, and it is quite another thing when that $16,000,000. debt is out of the way entirely.

Now, secondly, with respect to laches, all I have to do is point out some facts that certainly are known in legal history. Not that I think this is at all likely. I think we are here at proper time, as timely as anybody could be. Now in relation to the case against Boyd. They allowed Boyd to come in ten years after the reorganization. There has been no reorganization here. There has been no plan that has been approved. In the Boyd case they allowed him to come in ten years after the plan had been concluded. And in the Southern Pacific case against Bogard they allowed the rights of the man to be determined twenty-three years later. We are asking that the question be determined when this question is to be considered by Your Honor. We can not see for a single moment how the problem of laches even is appropriate.

Mr. Kitchel: May it please the Court: Adverting again to the sufficiency of the petition by reason of Rule 23, which I read to you. To be sure, Mr. Foley, the petitioner, is a bondholder, but in making this claim against the Missouri Pacific, whose bonds he holds, he makes it not as a bondholder but as a stockholder, and he specifically says so in his petition. In Paragraph 7, beginning at the foot of the page, page 2 of the Petition which he wishes to file, in that paragraph he first describes the bonds and states they are secured by the capital stock of the N. O. T. & M., Your Honor. "The Missouri Pacific has defaulted in the payment of interest and principal of these bonds, and in consequence pursuant to the terms of the indenture pursuant to which said bonds are issued, the owner and holder

of such 5¼% Secured Serial Gold Bonds has become and continues to be the equitable owner of the aforesaid capital stock of the N. O. T. & M." In asserting a right against the Missouri Pacific, he is doing so as the equitable owner of the stock and not as a bondholder of the Missouri Pacific. It would be absurd to say as a bondholder of the Missouri Pacific he would be attacking the Missouri Pacific solely to expunge a claim. So much for that.

And I move now that the request, to be allowed to file this proposed petition, be denied on account of the insufficiency of the petition in failing to state that the petitioner was the owner of the bonds at the time of the transaction complained of.

Now I propose to argue the question of laches, but before I do that I would like to place a witness on the stand. Mr. Railey, will you take the stand?

THOMAS T. RAILEY,

of lawful age, produced, sworn and examined, testified on behalf of Exceptor as follows:

Direct Examination by Mr. Kitchel:

Q. Mr. Railey, you are connected with the Missouri Pacific? A. Yes, sir.

Q. Will you state what your capacity is?

A. My present capacity is Assistant to the Counsel for Trustee of the Missouri Pacific Railroad Company and subsidiaries.

Q. Will you state how long you have been connected with the road? Perhaps not in that capacity but in some other capacity?

A. I came into the General Office as Assistant to Mr. White, under the title of Assistant Attorney, in 1915. Sometime after that I was made Assistant General Solicitor, which title I held up to the time of the appointment of the Trustee. Since then I have been Assistant to Counsel for Trustee.

Q. You are familiar, are you not, with the various offi-

cers and persons who had control of different parts of the system during the period 1926 to 1932?

A. I am with the principal officers; yes, sir.

Q. You have read the proposed petition which is now—they ask leave to file? A. Yes, sir.

Q. You are familiar with the fact that they complain not only of the invalidity of the advances made by the N. O. T. & M. to the Missouri Pacific, but also in regard to some locomotive questions, freight car hire and diversion of traffic? A. Yes, sir.

Q. Will you tell me who during that period, 1926 to 1932, was the Executive Vice-President of the Gulf Coast Lines of the N. O. T. & M.? A. Mr. H. R. Safford.

Q. In that capacity would he have any authority or executive control of the matters which are discussed in this petition?

A. Yes, sir; he would have direct supervision of any matters of that kind arising on the Texas Lines. Mr. Safford was the Chief Operating Officer next to Mr. Baldwin, as far as the Texas Lines were concerned, from about 1925 on.

Q. Is Mr. Safford still alive?

A. Mr. Safford died April 10, 1943.

Q. Who was in charge of the accounts of the Missouri Pacific and its subsidiary lines? A. Mr. F. P. Johnson.

Q. You are familiar with this claim, or the proof of claim that has been filed in this matter? A. Yes, sir.

Q. By whom was that prepared?

A. That was prepared and filed by Mr. F. P. Johnson after the institution of the reorganization proceedings but prior to the appointment of a Trustee.

Q. Mr. Johnson, in charge of the accounts of the Missouri Pacific and subsidiary lines, would have had charge of the accounts dealing with these various questions, of the various points charged in the questions? A. Yes, sir.

Q. Is Mr. Johnson still living?

A. Mr. Johnson died April 11, 1938.

Q. In connection with the charge that there has been diversion of traffic from the N. O. T. & M. Lines, who was Vice-President and General Manager of the Missouri Pacific Railroad Company during this period?

A. Mr. John Cannon.

Q. Would he have had knowledge and supervision of traffic generally to a certain extent?

A. He had supervision over operating and mechanical matters as far as the Missouri Pacific Railroad was concerned.

Q. How about the locomotives? Does that come under his jurisdiction?

A. As far as the Missouri Pacific is concerned.

Q. Is Mr. Cannon still alive?

A. Mr. Cannon died September 14, 1941.

Q. Who was the Vice-President and General Solicitor of the Missouri Pacific Railroad Company?

A. Mr. E. J. White.

Q. As General Solicitor, would he have anything to do with the various matters which have been complained of, or in the preparation of this claim which has been filed?

A. In so far as any legal matters were concerned, he had supervision.

Q. Mr. White, is he still alive?

A. Mr. White died December 29, 1935.

Q. There was a General Freight Traffic Manager of the Texas Lines, which included the N. O. T. & M., did it not?

A. Yes, sir.

Q. And who was he? A. Mr. Horace Booth.

Q. And he would have had supervision and control of the traffic that moved over that line, and other matters which are complained of? A. Over the Texas Lines, yes, sir.

Q. And he would be a witness, if he were alive, that we would like to rely on?

A. He would probably know more about this than anyone connected with the Traffic Department, in so far as Texas Lines are concerned.

Q. Is Mr. Booth alive? A. He died May 18, 1944.

Q. Mr. Railey, do you recall the date when this claim was filed?

A. It was filed August 29, 1933, under Special Master Number 1553.

Q. That was about eleven years ago. Are you familiar with the rules and regulations of the Interstate Commerce Commission in regard to the destruction of records of railway companies? A. Yes, sir; in a general way.

Q. Have you a copy of the rule made in 1937 in that particular? A. I have.

Q. May I have it?

(A paper is handed to counsel.)

Q. This was received directly from the Interstate Commerce Commission as one of their regular publications and notices?

A. The Commission mailed that to me in January, 1938, at my request. This is my office copy.

Q. And this order of the Commission was dated December 28, 1937? A. Yes, sir.

Mr. Kitchel: I offer this in evidence, Your Honor.

(The paper is marked "Institutional Court's Exhibit 1".)

Q. This order itemizes a number of accounts and records and tariffs, material and supplies, records of a number of matters, car reports and any amount of records of the road which are only to be retained for specified periods, for periods specified in the order. What has been the practice of the company in connection with the preservation or destruction of those records?

A. The orders of the Commission require you to name someone who is in charge of the destruction of records which we have obtained, such as orders during the reorganization proceeding, Mr. F. P. Johnson being named during his life; and by a court order Mr. Eckert being named at the present. When the records become voluminuous and the time within which they may be destroyed has expired, it is customary for the man in charge of the records to fill out a form, which is then approved by Mr. Eckert at the present time to the officer authorized to handle the destruction of the records, who then forwards it to the Interstate Commerce Commission, I believe, for their information. I am not sure whether their approval is necessary. And the records are then destroyed.

Q. You could not state, could you, that any particular record had been destroyed; you are simply specifying the general policy in connection with that matter?

A. It would be necessary to look at the records to see whether any particular records were destroyed. They are usually destroyed when we need additional filing space and the time has expired within which we must keep them.

Mr. Kitchel: That is all I have with this witness, Your Honor.

Questions by Mr. Brandwen.

Q. Mr. Railey? A. Yes, sir.

Q. Are you acquainted with the contents of the proof of claim filed by the Missouri Pacific against the N. O. T. & M.? A. Yes, sir; I have the original here.

Q. Do you know what was the basis of the claim of the Missouri Pacific against the N. O. T. & M.?

A. I know what it purports to be on its face.

Q. Do you know about it other than what it purports to be on its face?

A. I have no personal information as to the transaction out of which the claim arose. I do have information as to what has taken place in the Interstate Commerce Commission in subsequent proceedings.

Q. Were you apprised, prior to the filing of the claim of the Missouri Pacific against N. O. T. & M., that such a claim was going to be filed, as was filed?

A. I think Mr. F. P. Johnson discussed the claim with me the day he filed it.

Q. And what did he say to you at that time?

A. He said nothing other than that there was such a claim in existence, and asked if we should not as a matter of precaution file it, so there would not be any danger of any such a claim being barred by the court order which required claims to be filed at a specified time.

Q. Did he state to you the occasion or the basis of the claim?

A. No, sir; other than what it purported to be on its face.

Q. And it purported to be on its face advances made prior to the filing of the petition under 77?

Mr. Kitchel: The document speaks for itself.

Q. Do you know when the advances were made?

A. Not personally. I know what the records show, but not of my personal knowledge.

Q. The records are available at the present time?

A. The records were offered before the Interstate Commerce Commission, Mr. Wier's Exhibit 26.

Q. And the records on which the claim was filed by the Missouri Pacific against the N. O. T. & M. are available at the present time, are they not?

A. You mean the original records?

Q. Yes, sir.

A. I have no personal knowledge. I assume that probably, the chances are that the financial records are available.

Q. Well, it is your best recollection, is it not? That the records on which the claim filed by the Missouri Pacific against N. O. T. & M. in these proceedings are available at the present time? Is that a fair statement?

A. If you mean by that the books of accounts, showing the dates on which these advances were made, I should think that would be true. I have not seen them.

Q. We have a right to ask you that while these proceedings are pending those records will be kept intact?

A. I do not think that class of financial records are destroyed.

Q. So that the provision in the Institutional Investors Exhibit 1 was not applied to financial records such as we are discussing here?

A. The Commission exhibit sets out certain financial records which are not to be destroyed, and I assume those are the records to which you refer, and would disclose this? I have not looked at them.

Q. So that it should not be difficult at the present time to ascertain from the books of account of the Missouri Pacific, and the records retained by the Missouri Pacific, the basis of the claim filed by Missouri Pacific against the N. O. T. & M.? Isn't that correct?

A. Yes, sir; I think the records would show at the present time clearly the date of the advancements, the date of any credits on these advancements. Of course, if you go back of those records and say they were not prop-

erly kept, or that there was a diversion of traffic, then you would get into records that were destroyed.

Q. You are aware, are you not, that in the claim filed by the Missouri Pacific against the N. O. T. & M., all that the claim asserts is a claim based on advances made by Missouri Pacific—allegedly made by Missouri Pacific to N. O. T. & M.? Isn't that correct? A. Yes, sir.

Q. Therefore, any suggestion that you made, included in your preceding answer with respect to diversion of traffic and categories of that kind, would not at all be applicable to the claim in question?

A. Not as far as the Missouri Pacific claim formally filed; no, sir.

Q. So that we can feel satisfied all the records and books of account giving rise to this alleged claim are available at the present time?

A. I have not seen those records, but I assume that is correct, if you do not go back of the records and attempt to say that they are incorrect, or anything of that kind; but on the face of the records, I think that they are correct and they correctly reflect this account that is set forth here, and that they are in existence today.

Q. Does the Missouri Pacific have a large accounting office? A. Yes, sir.

Q. How many people are employed in the Missouri Pacific accounting office at the present time?

A. More than a thousand.

Q. How many people were employed between 1933, the date of the filing of this claim, and the death of Mr. Johnson, in the accounting department?

A. You mean an average, or how many people?

Q. Yes, sir. A. I would say over a thousand.

Q. Mr. Johnson had assistants, did he not, during his life-time as Chief Accounting Officer? A. Yes, sir.

Q. Who was his chief assistant?

A. Mr. Niven was what you would term his chief assistant prior to bankruptcy. He had the title "General Auditor".

Q. And from 1933 until the date of Mr. Johnson's death, who was?

A. Mr. Niven continued to fill that position until he retired about 1935. And after 1935 Mr. Nevin is dead and Mr. Don Pete is now filling his position.

Q. And Mr. Pete is available? A. He is available.

Q. Your books of account and records will show, will they not, the dates when the alleged advances were made by Missouri Pacific to N. O. T. & M.? A. I think so.

Q. Your books of account will also show, will they not, the purpose for which these advances alleged to be made by the Missouri Pacific to N. O. T. & M. were made?

A. They will show they were made, the records will show that they were for advances. I don't know whether they will show the information back of the advances. I never examined them to testify one way or the other on that.

Q. But you wouldn't say at the moment that the books of account now in existence of the Missouri Pacific will not show the purposes for which each one of the alleged advances from the Missouri Pacific to N. O. T. & M. were made?

A. I would not attempt to say what those books show in detail, because I have never examined them.

Q. Are you familiar with the fact, Mr. Railey, that detail evidence showing the purpose of each one of those advances was submitted to a Senatorial Committee in 1937 and 1938?

A. I don't know. I have never seen that exhibit, if there was one.

Q. You knew that examinations with respect to the alleged advances by the Missouri Pacific to N. O. T. & M. were made by a Senatorial Committee?

A. I know the Wheeler Committee investigated many facts, but frankly I have not gone into the investigation in this particular feature, and do not know whether they did or not.

Q. You are not aware of that? A. No, sir.

Q. Would it surprise you if I told you that that examination revealed testimony in the files of the Missouri Pacific indicating that the record showed the specific purposes for which advances were made by Missouri Pacific to N. O. T. & M.?

A. If they so testified, I have no doubt that is correct.

Q. Of your own knowledge, do you know whether it is not a fact that some advances were made by Missouri Pacific to N. O. T. & M. to enable N. O. T. & M. at once to repay these sums as dividends to Missouri Pacific when N. O. T. & M. didn't have cash funds available for the purpose of paying those dividends?

Mr. Kitchel: Object to that on the ground he is now going into the merits of the petition that he has not yet had leave to file.

Mr. Brandwen: May I argue that?

The Court: Yes, sir.

Mr. Brandwen: The point of Mr. Kitchel calling this witness is an attempt to show that things have happened which should bar the Court's consideration of this petition. On that point I say if any of these officers have died, that is an unfortunate act of God. The fact is that this matter of a claim of Missouri Pacific against N. O. T. & M. has to be—I say this with all due respect, Your Honor please—has to be determined by Your Honor before Your Honor can make that indispensable finding as to whether or not rights of any particular group are being discriminated against. Now, if the suggestion is made that because Mr. Johnson is dead, or Mr. Cannon is dead, or Mr. Booth is dead, we can show to Your Honor's satisfaction with the staff of the Trustee that is available as to the fact that these alleged advances were made, and the purpose of them, or that we can show, for example, that Missouri Pacific dominated the N. O. T. & M. The Missouri Pacific owned over 94 per cent. of this stock since 1926, that practically every director of N. O. T. & M. was a nominee of Missouri Pacific, the majority directors of N. O. T. & M. were directors of Missouri Pacific—all those facts can be shown with crystal clarity. The documents are available and copies of them are with the Senatorial Investigating Committee; but I am quite satisfied if Your Honor will permit us to get the co-operation of employees and officials of the Trustee of the Missouri Pacific and N. O. T. & M., we can get in documentary form every-

thing that will be necessary for the purpose of establishing this case—not substantially, but to the hilt.

Mr. Kitchel: You have referred to the Senate investigation. Would you mind stipulating that took place in 1938, was it?

Mr. Brandwen: Oh, yes, sir; that is right. I will stipulate to that. But the important thing is whether the records are available, and I am satisfied that fact can be demonstrated to Your Honor's satisfaction completely. I would also like to have the record show, subject to agreement of the various parties and Your Honor's approval, that in 1937 a petition was filed on behalf of a committee representing the First Mortgage bonds and Mortgage bonds of New Orleans, Texas & Mexico Railroad, pointing out—

The Court: Filed by whom?

Mr. Brandwen: Filed by the Committee representing holders of the First Mortgage bonds and Income bonds of N. O. T. & M. The Committee, incidentally, to which Mr. Kitchel alluded in a remark this morning saying they took no position in this matter. That petition was filed in these proceedings. That petition was filed here. That petition alleged, if I may comment on it, although it is on file, it is for the purpose of bringing the parts up to date, the various wrongs that are complained of in Mr. Foley's petition. It does not allege one important series of facts, that the advances in very large measure were made to enable N. O. T. & M. to pay dividends right back to the Missouri Pacific, and the petition of Mr. Foley goes into that in more detail. There is no reference to that in this petition. So that there was before this Court in 1937 a series of allegations made by this very responsible committee. And there are responsible allegations at that time that nothing was done about this petition at that time by the various parties. It might have been unfortunate, but it certainly can be used to deprive the 5¼% bondholders today of the right to have their day in court. With respect to these matters, I want to point out that the Trustee—

The Court: You say suit and petition was filed by the company some seven years ago?

Mr. Brandwen: Yes, sir.

The Court: What was the history of that?

Mr. Brandwen: Answers were filed, answers and affidavits were filed. So far as I know, no action has been taken thereon. At least, there might have been some action. I have not seen anything in the record. But the record does not indicate, if Your Honor please, that anything was done with respect to that. It may well be—I do want to say this: I will tell Your Honor the full story with respect to it. Although the petition itself shows that the claim, the question of the claim of the Missouri Pacific against N. O. T. & M., and although the petition itself says that instead of N. O. T. & M. being a debtor—that the petition says, first, it alleges these wrongs were committed by Missouri Pacific against N. O. T. & M., by reason of the domination by Missouri Pacific of N. O. T. & M. It says the claim filed by Missouri Pacific against N. O. T. & M. is not valid. It also says that, as a matter of fact, N. O. T. & M. is a creditor of Missouri Pacific to the extent of several million dollars; but in contrast with the petition which we are filing, it does not say in the prayer clause, "Wherefore, we respectfully request this Court to expunge the claim or to have an accounting" as appears in the petition of Mr. Foley. It simply says that "By reason of all these facts and circumstances the rights of the creditors and security holders of Missouri Pacific were so different from the rights of the creditors and security holders of the N. O. T. & M. that, paying all due homage to the Trustee, that purely as a human matter it is impossible for one and the same person to determine this question", and therefore they ask—and that was the one thing they asked for—that there be separate trustees. Now, so far as I know, nothing was done after the answering petitions were filed with respect thereto.

The Court: I think it was withdrawn.

Mr. Brandwen: Perhaps it was withdrawn, but one thing is clear—

Mr. Dearmont: I can tell your Honor. Answers were filed and the matter was set for hearing here on one Monday morning, and on Friday I had a telephone call from Mr. Johnson stating he did not desire to prosecute the petition. And that is all that has been done.

The Court: I remember it now.

Mr. Brandwen: I can understand the basis for it; but, after all, if the parties cannot arrive at some kind of an adjustment of their various rights, they are not going to go ahead with it, that does not dispose of the fact if you had one petition by a responsible committee setting forth certain allegations, and if as a matter of convenience between the parties they withdrew it, they can not by their conduct deprive other bondholders or other security holders of their rights just because they, as a matter of accommodation—and I am not making any further comment with respect thereto—as a matter of accommodation to say it is for their committee to go forward, but the fact the charges were made in a sworn petition, the fact they were verified by a responsible committee, the fact they were brought to the attention of the Court and the parties and the Trustee, is a fact. Nothing was lost thereby because nothing was done at the time, because there still is time to do it at the present time.

Well, Mr. Biggs just advised me, Senator Dearmont, that the petition of the Walker Committee is still pending.

Mr. Dearmont: As far as I know, it was never dismissed. I was notified they did not desire to prosecute their petition, that is all; I was not authorized to dismiss it. You will find in the records, I believe, there never was a formal dismissal.

Mr. Brandwen: If we have a right to assume that the petition is still pending, the facts certainly bearing on that petition and all the material throwing light on that is of importance, and certainly that could be raised at any time. Anyone could step in and join in that petition as long as it is pending. I might say that in looking over the Answer filed by the Debtor with respect to the petition, for example, on the question of use of the locomotives purchased by the N. O. T. & M. and the locomotives were turned over

to the Missouri Pacific, the Answer of Debtor itself does not deny that allegation. I looked at that very carefully.

The Witness: It is the Answer of the Trustee, isn't it; instead of the Debtor?

Mr. Brandwen: I think it is the Debtor. I am quite sure the Debtor filed an Answer, and the Debtor did not deny the fact that Missouri Pacific caused N. O. T. & M. to buy locomotives and equipment, not for N. O. T. & M. but to buy them for Missouri Pacific and turn over that equipment to Missouri Pacific. And then the Missouri Pacific advanced money to N. O. T. & M. for the purpose of paying for the equipment, and that forms part of the basis for this claim. Now all that was set forth in that petition. And as I say, as I read the Answer, that was not denied in any way at all. Now, then, in view of the first; first, the records of these matters are available—I will not argue this point for the moment.

Mr. Brandwen: Q. You say Mr. Safford was the Chief Operating Officer of N. O. T. & M. up to 1943?

A. During the existence of the corporation prior to bankruptcy, his title was Executive Vice-President of the Gulf Coast Lines. He was the Chief Operating Officer under Mr. Baldwin, and he performed the same function since bankruptcy up to the time of his death.

Q. And he had quite a large staff? A. Yes, sir.

Q. Who were his chief assistants?

A. Mr. Joe Anderson was his chief office assistant, and, of course, there are heads of various departments in Texas.

Q. Are they at present functioning?

A. Some of them are living; some are not. I have not followed the Texas lines as closely as I have the lines in St. Louis.

Q. And the books of account of the N. O. T. & M. showing the receipt of advances from Missouri Pacific and showing the payments by N. O. T. & M. to Missouri Pacific, are also retained, are they not?

A. Yes, sir; they are under Mr. Edrington's jurisdiction, I believe.

Q. So that those records showing what N. O. T. & M.

did with those advances, and what they repaid and what was distributed to the Missouri Pacific as dividends are available?

A. The records, whatever they show, are available. I do not know what detail they go into.

Q. Now, you, yourself, are not aware of who handled the matter involving the purchase of locomotives and equipment by N. O. T. & M., that is referred to in the allegation of the petition filed by Mr. Foley and the allegation in the petition filed by the Walker Committee in 1937?

A. Not from any personal information at the time; no, sir.

Q. Do you have any information at the present time as to who handled these transactions?

A. Well, at the time of the filing by the Walker Committee of their petition, Mr. Baldwin called a conference of all of the officers that might have any knowledge or information respecting the allegations, for the purpose of developing the facts. And I sat in on that conference, but I have not carried the facts sufficiently in my mind to attempt to testify regarding any of those details; nor did I know anything about that prior to the conference.

Q. Would you say Mr. Baldwin is acquainted with the facts underlying those allegations?

A. He sat in the conference and would remember better than I. I don't know that he had personal knowledge of all of them, he might have of some of them.

Q. Mr. Baldwin is still acting as Chief Executive Officer of the Missouri Pacific and I assume of the N. O. T. & M.? A. That is correct.

Q. And he is present and available in St. Louis?

A. Yes, sir.

(Short discussion off the record.)

Mr. Brandwen: Your Honor please, I can assure you that if Your Honor suggests to the Trustee that we get the co-operation of the officials and employees of the Trustee of both roads, this material could be presented in documentary form, so that there can be question about the facts.

Mr. Kitchel: Undoubtedly it could be shown what the

books show. As I understand it, they are trying to prove the books are false.

Mr. Brandwen: Beg your pardon, Mr. Kitchel.

Mr. Kitchel: You are talking about fraud.

Mr. Brandwen: I didn't use the term fraud in anything I said. I can only be held responsible for what I say. Sometimes that may be too great a responsibility, but certainly it is as big responsibility as I assume. I am not questioning at the moment, not questioning at the moment what the books show. I think the books will reveal the nature of these transactions, will certainly reveal the purpose for which the money was used, and will certainly reveal that you had Missouri Pacific transfer to N. O. T. & M. money and had N. O. T. & M. repay that to the Missouri Pacific in the form of dividends. The books will show that. Now the legal effect of that transaction is something I am at liberty to argue; but I am not questioning the books will show that. This is quite another matter.

Mr. Brandwen: Q. Now, you are aware, are you not, that there was some discussion during the period of trusteeship about the problem of fair rental rates for equipment as between Missouri Pacific and N. O. T. & M.?

A. Yes, sir; that matter came up in connection with the petition.

Q. Of the Walker petition? A. Yes, sir.

Q. And there were adjustments made thereafter, were there not, by the Trustee?

A. I do not recall. That is too long ago, and I did not handle that personally.

Q. Do you think Mr. Baldwin is aware of those negotiations dealing with the question of fair rentals for freight cars and other equipment as between Missouri Pacific and N. O. T. & M.?

A. Mr. Baldwin went into that very fully back in 1936, but whether he has carried that in his mind, I couldn't answer. That is expecting a good deal for him to do that, in detail, I mean.

Mr. Brandwen: I do not know whether he can recall it

all in detail, but there may be memorandum and records of conferences, and there may be certain records and books which might refresh his recollection. You would not say that material is not available?

A. At the time of this conference, and my opinion that I have expressed here today as to the importance of these men that are dead, in determining this, is based purely on what developed at that conference that Mr. Baldwin had called. These men I have enumerated here were the principal men in that conference, in charge of the different departments that were interested.

Q. You would expect, would you not, in a conference of that kind, Mr. Baldwin would call in the heads of the various departments that might be interested?

A. Each had certain subordinates that handled details, but I can not recall who they are, nor do I know whether they are in existence today—men who handled repairs and engines, and knew especially about the engines or the traffic.

Q. So it would be appropriate to ascertain, would it not, who in the staff of the Missouri Pacific and N. O. T. & M. are acquainted with the various matters alleged in the petition of Mr. Foley, and ascertain from them what they know about these matters. And until such information is obtained, no one can say that such information is not available and can not be available? Is that correct?

A. I think that is correct, but I want to qualify that by saying at the time of this conference dealing primarily with the question of diversion of traffic and failure to operate the Gulf Coast Lines for their own advantage rather than for the System advantage, there are many men who handled those matters, and whose testimony would be of great importance, that are now dead. And I enumerated particularly some of those that came to my mind, such as Mr. F. P. Johnson, and Mr. Safford and Mr. Cannon.

Q. Well, the problem is with respect to certain matters that may be germane to the problems alleged and the factual matter alleged in the petition. If that information can not be developed there may be with respect to some of these matters an absence of some of the proof we would like to submit.

A. I am not expressing any opinion. I was called here

as a witness to explain the death of gentlemen. I am not attempting to go into the merits of that controversy.

Mr. Brandwen: That is all.

Mr. Kitchel: Your Honor please, I have a little more proof to offer, but enlarging I may remark that although the books of account might show, the transaction attempted here is to discredit those books, and I mentioned the fact that the charge of fraud has been made. Mr. Brandwen did not make that charge perhaps, but his proposed petition states, "Attempted by fraudulent and unlawful means to create an alleged debt designed to be a claim against the assets of the N. O. T. & M." Furthermore, in Paragraph 14, "The foregoing wrongful acts and diversions, as well as improper accounting methods, has caused large financial losses". This is only by way to show what they are really trying to do is to upset the accounts.

Mr. Brandwen: If Your Honor please, dealing with that point Mr. Kitchel made, one of the points made in the petition and one of the points developed before the Senate Committee was the fact that some of the dividends paid by N. O. T. & M. to the Missouri Pacific were made out of capital. Now, how do they ascertain that? They take the books as they were, but they do not give full effect to depreciation. Now one may argue that, after all, you had a road here that was being depreciated necessarily; and if depreciation is not taken into account—and necessarily it is admitted depreciation should be taken into account, that appears from the books themselves—they failed to do something that should have been done. The time will come when if, for example, these books are examined, we say that most of the material will come from these books, we can take the books as they stand. The argument from the books is another matter as to whether a dividend is paid out of capital. It may be derived from a series of records, but so far as we are concerned at the moment, we are not going behind the books. If it becomes necessary as a matter of argument as a [signigicance] of what

appears in the books, we are going to reserve the right to argue the significance of the entries made on books. After all, there is not going to be anything said on the books that a dividend has been paid out of capital, but that does not deprive one after analyzing the figures of the opportunity of coming to a legal conclusion that the dividends were paid out of capital.

Mr. Kitchel: Further, on the point of laches, Your Honor, I wish to have made as part of the record in this proceeding a transcript of the testimony taken before the Interstate Commerce Commission, certified to this Court, from which it will appear that all these questions were thoroughly threshed out before the Commission.

I would also like to have made part of the record a report of the Interstate Commerce Commission, dated January 10, 1940.

Supplemental Report of the Interstate Commerce Commission, dated April 9, 1940.

Supplemental Order of the Interstate Commerce Commission, dated April 29, 1940—all of which are certified to this Court and are part of the record in this main proceeding.

The Opinion of this Court approving the Plan, dated June 20, 1941; and Findings of Fact and Conclusions of Law, and Order and Decree of Court approving the Plan of Reorganization, dated July 12, 1941. I ask that these matters be made part of the record in this hearing. (See Court File.)

Mr. Brandwen: Your Honor, I find myself in a delicate position with respect to that. If, for example, it is not to be presumed Mr. Kitchel consulted these portions of the records of the Interstate Commerce Commission, I think it would be simplifying the record, because there is a good deal in the record that can have no possible connection with this hearing. And I do not want to be a party to anything that would deprive Mr. Kitchel of anything that has any connection or any relevancy to the matter before Your Honor on this hearing.

Mr. Kitchel: Your Honor, I would like to make such

parts of that transcript of testimony part of this record as deals with these questions. Now Mr. Brandwen is quite right, a whole lot of that dealt with other questions. I have made an analysis which is not complete, but I would like to have these certain pages and exhibits mentioned on these pages made part of this record, together with any portions dealing with these questions that we might have omitted in going over this very hastily one afternoon. The record is very voluminous, as Your Honor knows; but what I particularly wish to have made a portion of this record is the testimony of Mr. Safford, on pages 925 to 928 of the transcript, and [pages] 2251 to page 2252. Testimony of Mr. Ballentine, pages 2787 to 2817; 3054 to 3079; 3119 to 3152; 3602 to 3636; 3640 to 3668. The testimony of Mr. Trobaugh, page 3185 to page 3212. Testimony of Mr. Scruggs, pages 3771 to 3813. Testimony of Mr. Wyer, pages 529 to 538; 1026 to 1030; 3165 to 3166; 3213 to 3377; 3577 to 3583; 3592 to 3601, and all the exhibits mentioned on those pages. Also such part of the transcript as shows testimony brought out either on direct or cross examination by my friend, Mr. Brandwen. I have not enumerated the pages on that because there are too many of them.

Now that is all I have except the matter of argument, Your Honor.

Mr. Brandwen: I haven't any objection to the offer that Mr. Kitchel made. And I assume it is so that this material he refers to is germane to this issue. I do not know what it is and I do not want to hold this up in any way. I assume if there is any other material or matters on this that Mr. Kitchel had inadvertently omitted, if you call that to his attention I presume it will be all right to have that in the record.

Mr. Kitchel: Yes, sir.

(Matters offered are in the Court File.)

Argument:

Mr. Kitchel: Your Honor, I have made my motion in regard to the insufficiency of this petition which they

propose to file, and I now move that the motion for request that this petition be filed be denied on the ground of laches.

Now this proceeding under Section 77 has been pending over eleven years. This particular claim which is now being disputed was filed on August 29, 1933, pretty nearly eleven years ago. This petition for the appointment of a separate trustee, referred to by Mr. Brandwen, was filed in March, 1937. The portions of the transcript before the Interstate Commerce Commission covering these transactions now complained of, the testimony was given in the years 1936 and 1937. During all this time this bondholder has failed to raise any objections, has failed to raise any of the points which he now raises. Now unreasonable delay has frequently been held to be sufficient to constitute laches, but in this case we have several additional features that render it unjust and inequitable to permit the starting of a new proceeding which would be initiated by the filing of this petition. In the first place, it is a well settled rule of law, and I think Mr. Brandwen himself referred to it, that if during the period of delay in presenting a claim such as this the position of the party, against whom the claim is directed, has changed to its detriment, laches will be established. Now we have proof today that many of the head men who handled the transactions complained of, and who necessarily would be witnesses in behalf of the Missouri Pacific in disputing this claim, have passed away. Perhaps the books are there, but the details of the transactions, the reasons why the various steps were taken and the fairness of everything, what really happened, was under the direct superivision of these men. To be sure, they might have had assistants, but the Missouri Pacific is now deprived of the aid which these men could have given in contesting this claim, had they been alive. Now the position of the Missouri Pacific has changed to its detriment, and that is sufficient to warrant Your Honor in refusing to permit this petition to be filed. Also, although the books of account may have been preserved, apparently the number of supporting records, detail records and waybills and things like that, have been destroyed.

Now, in the second place, on the point of laches, it will appear from these pages of the transcript before the Interstate Commerce Commission that I have put in evidence, that all of those matters that are now complained of, the advances and question of whether they were used to pay dividends, these locomotive exchanges, these car hire rates and diversion of traffic, have all been testified to, cross-examined and gone into detail before the Commission. Why go into it again? The record is there. It isn't going to be necessary to file that stuff all over again. Back in October when we were having the hearing on this new Plan before the Interstate Commerce Commission, counsel who now represent petitioner at that time represented certain other parties, and he made an offer of proof attacking this very claim on various grounds, and the Commission, the examiner in control, refused to allow the offer of proof for the reasons stated; but in his brief Mr. Biggs stated, which he filed under December 1, 1943, "We believe that all this evidence is already in the record of this proceeding". If it is in the record of this proceeding, why reopen the subject? The argument can be made before the Court when the proper time comes. There is no use to take further testimony on this petition.

Now in its report on the Plan which was approved by the Commission in 1940, the validity of this claim was adjudicated by the Commission, not by the Court; and the allocations of securities were made by the Commission on the basis of the validity of that claim. The Court in its opinion approved the Plan of the Commission in all its details except to cure some little defects, which we claim is an adjudication of this claim already had before the Court.

Now, in the third place, again on the question of laches. During the interval of eleven years during which this petitioner has taken no action whatsoever, the position in regard to the Missouri Pacific, so far as reorganization is concerned, the position of this proceeding has changed and developed to such an extent that it would be a detriment if anything now were brought up at this late day to inject a new subject, to encumber the record with a new proceeding. As was stated in the Continental Illinois

Trust case against the Rock Island, the object of Section 77 is to develop a speedy reorganization. Section 77 has not quite lived up to that program, but we should endeavor to encourage and do what we can do to get it through.

Now this proceeding has reached a state where the Commission has now approved a new plan. To permit this particular proceeding to be started now would only result in further delay. It is well settled that intervention will not be granted when it is not made in due time, and would merely serve to encumber the record and cause delay.

I refer Your Honor to a case that perhaps you may be familiar with, Blumgart against St. Louis-San Francisco Railway Company, 94 Federal (2), 712. In that case a small bondholder made the contention that he had the right to intervene. The case was decided by Your Honor and was sustained on appeal. Your Honor stated then that intervention is not a matter of right but is addressed to the judicial discretion of the Court. In a later case in the Eighth Circuit, Carpenter against Wabash Railway Company, 103 Federal, 996, reference is made to the Blumgart case. It says:

"Granting of leave to file upon the basic ground urged by the applicant would serve merely to encumber and delay the orderly process before a reorganization of the properties of the Railway Company." And that case also contains the following conclusion:

"In cases involving the complexity of the consolidated cause, large discretion is lodged in the District Court. In exercising its discretion the Court should consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

Now if this petition should be permitted to be filed, it would be a precedent which would enable anybody, even a striker, to come in at a late date and further delay the Plan. Your Honor has had enough of these railroad reorganizations to know there is enough trouble with them without seeking any additional trouble. And the impact on the railroad reorganizations in general, if this petition be granted and it becomes a precedent, Your Honor can well appreciate.

Now I have only one more thing to say in regard to this matter. I think that this whole proceeding is merely brought for the purpose of delay. At the hearing in October on the present Plan when this present counsel representing someone else made this lengthy offer of proof, that having been denied he asked the Examiner whether the offer would be written into the record, and the Examiner said, "Yes," it would be written into the record, "but you can not go ahead with your proof." And Mr. Biggs said, "I do not intend to go ahead with it."

Now I move, Your Honor, on the point I first mentioned, insufficiency of the Petition, and on the second point of laches, the motion for leave to file the petition be denied, and the motion to intervene be likewise denied. Further, I think a small individual, a bondholder of 25,000 bonds, should not be allowed to intervene; otherwise, the record would be encumbered by too many individuals.

The Court: The parties have shown no eagerness to enlighten the Court as to when their client secured the bonds and what he paid for them.

Mr. Brandwen: I do not know. Perhaps Mr. Biggs may know.

Mr. Biggs: I do not know, but I will ascertain that information and file it with you. Doctor Foley lives in Michigan, Your Honor.

The Court: Haven't you any knowledge at this time, Mr. Biggs?

Mr. Biggs: No, sir.

The Court: Has your client informed you—

Mr. Biggs: I will say for the record I believe he purchased them after bankruptcy, but I do not know that definitely.

Mr. Homire: If the Court please, at the time of the hearing before the Examiner in October last, on the Plan which has now come out, Mr. Biggs was representing a party by the name of Comstock, I believe. And at that

time the point was brought out that Mr. Comstock really had no standing himself to raise the question, and Mr. Biggs said at the hearing that he would institute a suit and raise the questions he was then attempting to prove up before the Commission. Now that was last October, and here we are now in July, and he has just brought this suit, and it seems to me that alone is an example of how dilatory the parties have been in proceeding with a claim of this character.

The Court: The Court doesn't want to lay new emphasis on the number of bonds owned, or how many have been sold, or what was paid; but in a court proceeding like this, a railroad reorganization, it has been twelve years, it could not help but have some weight showing something about what percentage of the parties were interested in having the reorganization, how many wanted to have it upset.

Mr. Biggs: Could I make a statement along that line?

The Court: Yes, sir.

Mr. Biggs: Your Honor, if that is a matter of consequence to you, I can produce other parties holding probably ten per cent. and maybe less—that means over a million dollars in bonds—to join in this petition as plaintiffs. So if there is any question about the amount of bonds in this case as a crucial point, I will produce holders of over a million dollars.

The Court: The Court doesn't want to be understood as saying it is a crucial point.

Mr. Biggs: I will state in the record that I will produce—

The Court: No, sir; the matter is going to be disposed of now.

Mr. Biggs: I would also like to state there is pending now before the Interstate Commerce Commission an application for a committee to represent these bonds, and that application has not been acted on. I do not want to make any representations about what will happen, but I have been advised that committee will join in with this.

Mr. Homire: I would like to advert for a moment to the suggestion Mr. Brandwen made about the RFC not being an interested party in the outcome of this claim that he is attempting to relitigate. He was at great pains to show that the RFC was a holder in due course for value without notice, and then he goes on to say that "Well, it isn't material", he isn't willing to stipulate that. So you can see that he doesn't want to make a stipulation which would safeguard the rights and interests of the RFC., and at the same time he contends that we have no standing to object to the filing of the petition. It seems to me his position in that connection is inconsistent on its face. And furthermore, the RFC just as all other parties who have labored from the beginning in this proceeding to bring about a reorganization of the property, has an interest in common with them, and it is a very serious and a very important interest.

Now, Your Honor, I believe has read the RFC Answer to this petition. I do not want to read it again into the record. I do not think that is necessary, but I would like to call attention to the fact that creditors were required to file claim in these proceedings. The Missouri Pacific filed a claim on these N. O. T. & M. advances. Those advances were pledged to the RFC., in round numbers, ten million dollars. The RFC also filed a claim based on those advances in part, because that was an important part of our collateral. Many years have elapsed since the filing of these claims. This party who is now attempting to intervene did not challenge or protest or object in any way, and a reasonable time for filing any objection or protest to them has long since expired. And while Mr. Kitchel has very clearly and plainly pointed out the prejudice which the Missouri Pacific would be put to if this claim were now to be relitigated, and he referred to the death of important officers who had charge of the matters in question, the RFC as innocent holder of these advances is subject to the same prejudice which the debtor would be subject to, and *a fortiori* against the RFC., this intervener ought not to be permitted to proceed with this reopening of the record for the relitigation.

I would like to emphasize one point in particular, and

that is that the wrongful acts complained of, and they are only allegations after all, were accomplished and could be accomplished only by reason of the ownership of the stock by the Missouri Pacific of its subsidiary, the N. O. T. & M. That stock is pledged to the securing noteholders or securing bondholders, and they claim and must claim through the very instrumentality by which the Missouri Pacific is alleged to have carried out these wrongful acts. And surely those wrongful acts can not be asserted against the RFC., who is entirely innocent of any participation in those acts. As far as the standing of the creditors is concerned, the RFC has just as good standing to complain of any wrongful acts, I suppose, as these parties whom Mr. Biggs represents. Or I should say "this party" because he has now limited it to this one.

I would like also to emphasize that before the RFC took these advances as security for the twenty-three million which it loaned on the Missouri Pacific, the Interstate Commerce Commission received an application from the Missouri Pacific asking the Interstate Commerce Commission to approve and authorize notes evidencing these advances. That is not true as to all, because as to a small part it was unnecessary to get the Interstate Commerce Commission's approval; but as to the very large part, over seven million or seven million and a half, roughly, the Commission gave its approval to those advances and said they were lawful and valid. In the exact language of the Interstate Commerce Commission act, Section 20a, which was applicable, the Commission found that these notes were for a lawful object within the corporate purpose of the N. O. T. & M. compatible with the public interest and necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which did not impair its ability to perform that service. And the Commission further found that the issuance of these notes was reasonable, necessary and appropriate for the purpose of which the Commission found to be lawful. So, in fact, this matter was passed on, this legality of these advances and this note was passed on before the reorganization proceedings ever commenced.

And, finally, I would like to emphasize a little further

the question of laches, which Mr. Kitchel has dealt with. Mr. Kitchel referred to the decision of the Supreme Court in the Rock Island reorganization proceeding. That is 294 U. S. 648. On page 685 the Court in its Opinion said:

"The delay and expense incident to railroad receiverships and foreclosure sales constitute probably the chief reasons which induced the passage of Section 77. And to permit the perpetuation of either of these evils under this new legislation would be subversive of the spirit in which it was conceived and adopted. Not only those who institute the proceedings and those who carry it forward are bound to exercise the highest degree of diligence, but it is the duty of the Court and of the Commission to see that they do".

Any party who is in this proceeding is under a duty, is what the Court is saying. It is under a duty, and it is the further duty of the Court and the Commission to see that they carry this proceeding forward with the highest degree of diligence. The Court goes on to say:

"Proceedings of this character involving public and private interests of such magnitude should as far as practicable be given the right of way both by Court and Commission to the end that they may be speedily determined."

Now, in effect, what this intervener is attempting to do is to reopen the record which was closed before the Commission. Mr. Biggs said in his brief before the Commission that the record included this material, and the Commission in its report which was just handed down under date of July 4th and released only a day or two ago, comments on his statement in his brief, that these matters were adequately covered in the record before the Commission. And what I suppose Mr. Biggs and his client really want is an opportunity to raise certain questions of law in connection with the approval of the Plan. It is not necessary to reopen this record and go back into all those transactions now at a time when we have inadequate assistance and when many of the witnesses are dead. So far as the argument of his legal question is concerned, that is an appropriate matter to take up when this Plan comes before this Court for approval. And it is not necessary to go into all this material and encumber the record which now runs into many

thousands of pages. And Your Honor has complete discretion in this matter. And we submit respectfully that a sound exercise of your discretion would be in the denial of this application.

Mr. Pierce: If Your Honor please, the Debtor has filed an answer which raises points which Mr. Kitchel so ably argued, and Debtor's argument could add nothing.

I do wish to call the Court's attention that the Answer challenges and denies what the Debtor's counsel deem material allegations of fact in the petition. And there is no proof whatever here offered in support of petitioner's allegations, which are so challenged as has just been stated, under the statutory issuance of this order. That is entirely discretionary with Your Honor. But the main witness whose testimony should develop facts which would enable you properly to exercise your discretion, is not present; and I ask that you take that into consideration in determining how to exercise your discretion.

Mr. Brandwen: Would it be too great an imposition on Your Honor? Your Honor please, I recognize that with respect to the limited proceeding that we have here today; namely, petition for leave to intervene and file petition. This is entirely in Your Honor's discretion, and Your Honor has to be guided by the various considerations which Your Honor thinks appropriate. I do want to point out that when the Plan of Reorganization comes up, the rights of any particular bondholder to have this question determined, because that affects necessarily his right to participate in the Plan of Reorganization, and the extent of his participation is not a matter of discretion, that is a matter of right that under the Bankruptcy Act is given to him. If Your Honor thinks that it is more appropriate to have it raised at that time instead of now, of course, that is entirely within Your Honor's discretion. We are doing it now so that if any time may be saved between now and the time the Plan of Reorganization comes up, we would

like to save that. If, on the other hand, the parties and Your Honor feel that it should wait until the Plan of Reorganization comes on for hearing, well that may be Your Honor's ruling. But in the interest of moving along we want to have it raised at the present time.

Now with respect to the problem of laches, Mr. Homire read from the language of the Court in the Rock Island case stating the purpose of Section 77 is to speed up proceedings. This matter has been in court here for eleven years, and the quotation is—

The Court: It has been here twelve years; it has been under 77 for eleven years.

Mr. Brandwen: Yes, sir. If Mr. Homire wishes to suggest by quoting from this Court that delays are subversive of the intent of the Legislature in passing that Act, then certainly the fact this has been here eleven years is, I think, a very interesting commentary with respect to the various actors in the situation. I make no point of it. I simply want that to be noted.

Now with respect to the alleged prejudice with respect to the death of the parties. Again I wish to say that I am satisfied and I think Your Honor can be satisfied very quickly that nobody need be prejudiced by reason of the fact of the death of some of the individuals. All material can be made available. Now, again, I wish to emphasize there has apparently been a misapprehension. The question of the validity of a claim is something that the Interstate Commerce Commission does not undertake to deal with. It says so expressly. The Supreme Court has ruled that expressly, that is something in the exclusive jurisdiction of the Court. You can have all the testimony in the world before the Interstate Commerce Commission, but that does not absolve the Court from dealing with that as a matter de novo as to what are the rights of the parties. So this testimony can not have any bearing on the question of validity of the claim. And that has not been dealt with.

Now I want to say this: Suppose, for example, there was a trial in an ordinary action before the Court, and that trial goes to judgment; it is appealed to the Circuit Court,

and then it is sent back for a new trial. That is the case here. Certainly on new trial the plaintiff is not limited solely by the arguments of the petition he filed at the first trial. It is a new trial. He can raise all the points that appropriately can be raised. And this was sent back to the Interstate Commerce Commission as a new proceeding, and when Your Honor passes on it, he has to pass on all these rights. So while it is true the present proceeding is simply discretionary, the time will come in the near future when the matter will be a matter that will have to be determined by Your Honor and all appropriate material bearing on the validity of the claim and rights of the bondholders will have to be considered. And I think it will save time if it is done now, because it will have to be done sometime.

Now with respect to the allegations. If Your Honor finds that the statement in the petition that the bondholders by reason of default of the bonds have become equitable owners of the stock of N. O. T. & M., which is a legal conclusion; but if Your Honor feels that by any chance that makes them stockholders and therefore makes the petition defective, I ask at the present time to withdraw that reference in that petition so that what will be submitted to Your Honor will be the elimination of any reference to the fact that this bondholder and the 5¼% bondholders as a class have become the equitable owners of the stock, so that in the consideration that Your Honor may give to this matter I would like to have that amendment made so there can be no question about that. While I do not agree with the contention of Mr. Kitchel, if that contention should influence Your Honor I want to have the record clear that this is out, if I make this—

The Court: What is that that is changed?

Mr. Brandwen: Paragraph 7. I will say "default", so that the last sentence of Paragraph 7 should read, instead of the way it reads now, "default has occurred in the payment of the interest and principal of these bonds", striking out the rest of that paragraph. At the moment I do not think there is any other reference to equitable owners, but if there is, I would like to—

Mr. Homire: If the allegation were true, your striking it out would not make it untrue.

Mr. Brandwen: It is, Your Honor, between the factual allegation and a legal conclusion.

Mr. Homire: If it is a legal conclusion, that is for the Court.

Mr. Brandwen: May I state, so far as the record is concerned, while I do not agree with Mr. Kitchel as to his analysis of the law on that point, let the petition be amended so it will read as follows, whatever the consequences are, legal consequences that flow.

The Court: Very well.

Mr. Brandwen: Now the Interstate Commerce Commission couldn't have passed on the validity of things at that time. It doesn't undertake, when it passes on collateral, to pass on the legality. If it did, it would have to be a judicial body, such as it is not at the moment; and passing on that I think is contrary to the functions of the Interstate Commerce Commission, and the Interstate Commerce Commission never presumed to undertake that function.

The Court: That is all on laches? I will take the matter as submitted now? Anyone want to be heard further?

Mr. Kitchel: Yes, sir.

Mr. Kitchel: I want to say one thing, Your Honor, and that is exactly as already stated. Everything he needs is in the record already. To be sure, that record was before the Interstate Commerce Commission, but it has been certified to you. He says all in there. Why go into it again? All that is necessary is to have the legal argument when the time comes for the Plan.

Mr. Brandwen: I do not recall having made such a statement. I do not make it with respect to this petition. There has been no statement made with respect to the petition before Your Honor this morning that all of the evidence that is pertinent to the determination of the

fundamental issues presented by the petition—I say that evidence is not in the record. I want to make that perfectly clear so there will not be any question in anybody's mind about our position on that.

Mr. Homire: In connection with that, will it be understood that the Commission's Report of July 4, 1944, the one recently handed down, which is called a Supplemental Record of the Commission decided July 4, 1944, may it be understood that will be part of the record in this hearing?

The Court: Yes, sir.

Mr. Brandwen: To the extent that is pertinent to this; I don't think the whole report.

Mr. Homire: I am pretty sure you have to go into the whole report to find out exactly what the Commission thought about the matter. I do not think it ought to be limited to that extent.

Mr. Brandwen: Well, I have my objection on that point, Your Honor.

The Court: The matter is taken as submitted then, gentlemen. You may announce an indefinite recess.

Conclusion of Testimony and Proceedings.

Certificate of Court Reporter.

I, Albert O. Phelan, do hereby certify that on July 21, 1944, I reported in shorthand the proceedings in this cause, and certify that the foregoing is a true and complete transcript thereof.

.....

Court Reporter.

(Order dismissing Petition of Ernest Lee Foley for Leave to Intervene and for Show Cause Order.)

(Filed August 3, 1944.)

(Order No. 2565.)

In the District Court of the United States
Eastern Division, Eastern Judicial
District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

The Court having considered the Petition of Ernest Lee Foley for an Order to show cause why Petitioner should not be granted leave to intervene specially in the above entitled proceedings, and for leave to file a Petition therein in substantially the form of "Exhibit A" attached to said intervening Petition, the Answer of Reconstruction Finance Corporation, the evidence submitted and the arguments of counsel, and the Court being fully advised in the premises:

It Is Ordered:

That said Petition be and the same is hereby denied.

GEO. H. MOORE,
Judge, United States District Court.

Dated: August 3, 1944.

(Orders Nos. 2794 and 2794A of District Court, authorizing Trustee to call for payment all bonds secured by St. Louis, Iron Mountain and [Sourthern] Railway Company, etc.)

On July 26, 1945 the District Court entered Order No. 2794. This Order authorized the Trustee to call for payment all bonds secured by the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions, First Mortgage now outstanding and unpaid. The total principal still outstanding on these bonds amounted to $24,183,600.00.

On October 12, 1945 the District Court entered Order No. 2794A. This Order authorized the Trustee to carry out the terms of Order No. 2794, which authorized the payment of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Division, First Mortgage Bonds, notwithstanding the appeal by Andrew W. Comstock from said Order No. 2794.

Order

Fixing the Time Within Which Objections to the Plan of Reorganization Certified by the Interstate Commerce Commission May Be Filed Herein, and Within Which Petitions for Allowance of Compensation or Expenses May Be Filed, and Fixing a Date for the Filing of Briefs and Reply Briefs and for the Hearing on Objections to the Plan and Providing for the Giving of Due Notice to All Parties in Interest.

(Filed October 31, 1944.)

[Order No. 2604]

The Interstate Commerce Commission by a Supplemental Report and a Supplemental Order entered July 4, 1944, having approved a Plan of Reorganization of all the Debtors comprising the present Missouri Pacific System

(except the Missouri-Illinois Railroad Company), and by its Third Supplemental Report and Third Supplemental Order dated October 9, 1944, having modified and approved as modified said Plan of Reorganization; and the Interstate Commerce Commission having thereafter certified to this Court the Plan of Reorganization approved by said Reports and its Order of October 9, 1944:

Now, Therefore, pursuant to the provisions of Section 77 of the Bankruptcy Act of the United States, it is hereby

Ordered:

1. All parties in interest, whether or not they may have intervened herein or become formal parties to the record of this proceeding, having any objections to said Plan of Reorganization shall file detailed and specific objections in writing to the Plan and their claims, if any, for equitable treatment and briefs in support thereof, in the Office of the Clerk of this Court in the United States Court House in the City of Saint Louis, Missouri, on or before the 25th day of November, 1944, and shall serve copies thereof on or before said date as hereinafter directed.

* * * * * * *

8. Any and all objections to said Plan of Reorganization and any and all claims for equitable treatment and any and all petitions for allowance of compensation and expenses which may be filed herein pursuant to this order are set for hearing in Court Room No. One (1) of this Court at Saint Louis, Missouri, at 10:40 A. M. on January 8, 1945, or as soon thereafter as conveniently possible, at which time any party in interest may appear and be heard in support of or in opposition to such objections and such claims for equitable treatment and such petitions for allowance.

* * * * * * *

GEO. H. MOORE,
Judge, United States District Court.

Dated: October 31st, 1944.

"Schedule B"

In the

District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

To All Parties In Interest in the Aforesaid Proceedings.

Pursuant to an Order entered October 31, 1944, in the above entitled proceedings, Notice is hereby given that:

1. The Interstate Commerce Commission has certified to the Court, pursuant to the provisions of Section 77 of the Bankruptcy Act, a Plan of Reorganization of the Missouri Pacific Railroad Company, Debtor, and of other intervening Debtors in said proceedings, except Missouri-Illinois Railroad Company, Debtor, copies of which are on file with said Commission and the Court.

2. All parties in interest, whether or not they may have intervened in said proceedings, or become formal parties to the record thereof, having any objections to such Plan of Reorganization, shall file detailed and specified objections to the plan and their claims, if any, for equitable treatment and briefs in support thereof, in writing in the office of the Clerk of the above named Court, at the United States Court House in the City of St. Louis, Missouri, on or before the 25th day of November, 1944, and shall serve copies thereof on or before said date, on all parties to and interveners in said proceedings.

* * * * * * *

4. 10:00 A. M., on Monday, January 8, 1945, has been fixed as the time and Court Room No. One (1) of the Court in the United States Court House in the City of

St. Louis, Missouri, as the place for hearing all parties in interest in support of, or in opposition to, any and all objections to said Plan of Reorganization and any and all claims for equitable treatment and any and all petitions for allowance that may be filed herein pursuant to said Order.

By Order of the Court.

GUY A. THOMPSON,
Trustee of said Debtor Railroads.

Objections of Andrew W. Comstock, Holder of 5¼% Secured Serial Gold Bonds of Missouri Pacific Railroad Company, to Plan of Reorganization Approved by the Interstate Commerce Commission.

(Filed November 22, 1944.)

In the

District Court of the United States.

Eastern Division—Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad No. 6935

Pursuant to order entered October 31, 1944 in the above entitled proceedings, Andrew W. Comstock, holder of $80,000 of 5¼% Secured Serial Gold Bonds due 1931-56, Missouri Pacific Railroad Company (hereinafter called the 5¼% Secured Bonds), on behalf of himself and fourteen owners of at least $900,000 additional principal amount of said 5¼% Secured Bonds for whom he is duly authorized to file these objections, and on behalf of all other owners and holders of said 5¼% Secured Bonds, hereby makes and presents the following objections to the Plan

of Reorganization of Missouri Pacific Railroad Company (hereinafter called MOP) including New Orleans, Texas & Mexico (hereinafter referred to as NOTM) approved by orders dated July 4 and October 9, 1944 of the Interstate Commerce Commission (hereinafter called the Plan), and submits the following claim for equitable treatment.

Objections to the Plan.

1. The Plan is unfair and inequitable by reason of the absence of findings by the Commission of the value of the 121,460 shares of the capital stock of NOTM constituting the collateral securing the $12,140,000 principal amount of the 5¼% Secured Bonds outstanding. This block of stock constitutes more than eighty per cent (80%) of the total outstanding stock of NOTM and carries control of this important and profitable railroad.

2. The Plan is unfair and inequitable by reason of its failure to allocate reorganization securities to said 5¼% Secured Bonds having a value and a money's worth fully equivalent to the value of the 121,460 shares of capital stock of NOTM securing said 5¼% Secured Bonds.

3. The Plan is unfair and inequitable by reason of the failure of the Commission to comply with the requirement imposed on it of allocating to the 5¼% Secured Bonds the equitable equivalent of the rights surrendered. The new securities allotted to the 5¼% Secured Bonds are not the equitable equivalent of the collateral required to be surrendered. The Plan deprives the 5¼% Secured Bonds of their collateral without their consent and without compensating them with the full equivalent thereof.

4. The Plan is unfair and inequitable inasmuch as it fails to give recognition to the fact that the 5¼% Secured Bonds are secured by collateral, and that said collateral has large value. It assumes that the position of the 5¼% Secured Bonds is junior to MOP's general mortgage bonds and to those ranking ahead of the general mortgage bonds. The 5¼% Secured Bonds, however, are in a position like that of the Reconstruction Finance Corporation

and various bank creditors. They, like the Reconstruction Finance Corporation and the various bank creditors, have no lien on any fixed property of MOP Railroad Company. They are a separate class of creditors without any lien relationship to the mortgage debt of MOP and their treatment under any plan must be based upon the value of their separate security.

5. The Plan is unfair and inequitable because it permits other classes of creditors having no lien or claim whatsoever thereon to participate to the exclusion of, or prior to the 5¼% Secured Bonds, in the assets and earnings. The interest of the 5¼% Secured Bonds in the assets and earnings after fixed charges of NOTM are matters of great value which cannot be taken away without compensation in money or money's worth.

6. The Plan is unfair and inequitable inasmuch as it is based on the finding of the Commission that

> "Regarding the treatment of the junior claims of the system, namely, the Missouri Pacific general-mortgage bonds, serial 5¼-percent bonds, and convertible bonds, the New Orleans capital stock, and the International adjustment bonds, the following formulas were used by the negotiators of the compromise plan" (p. 56).

7. The Plan is unfair and inequitable inasmuch as it is based on the finding of the Commission that

> "We also find that the treatment accorded the Missouri Pacific serial 5¼-percent bonds and that accorded the unsecured creditors of the Missouri Pacific and unsecured creditors and stockholders of the New Orleans (aside from the allocations of stock-purchase warrants) is justified by the total value and earning power of these properties and the value of the free assets of these debtors and, in view of the rights of prior creditors and within the new capitalization which we have found justified, represents the full extent of participation in the plan of reorganization to which they are entitled" (p. 61).

8. The Plan is unfair and inequitable inasmuch as it is based on the finding of the Commission that

> "They would take the stock at $100 per share, if computed on the total amount of their claim, and the serial bondholders, who are secured collaterally by New Orleans capital stock, would receive only such amount of the new class-A common stock as the New Orleans stockholders are found in the plan to be entitled to receive, plus an additional amount in recognition of the control element of the pledged 80 percent of New Orleans stock, the remainder of the claim of the serial 5¼-percent bondholders not so satisfied being treated in the same manner as the claims of other unsecured creditors of the Missouri Pacific" (p. 52).

9. The plan is unfair and inequitable inasmuch as it does not adequately recognize the value of the assets of New Orleans, Texas & Mexico Company (hereinafter referred to as NOTM), and does not give adequate consideration to the earnings, the assets, and the cash position of the properties.

10. The Plan is unfair and inequitable by reason of its failure to give adequate consideration to the amount of cash and its equivalent in the hands of the Trustee of NOTM and to the net current assets of NOTM. The Plan also fails to provide for the advantageous and effective use of the excess cash now in the hands of the Trustee.

11. The Plan is unfair and inequitable because it fails to give consideration to the earnings of NOTM to date. The Commission relied on figures only up to July, 1943. The Commission erred also in relying on earnings from the period from 1938 to 1942, when figures for the year 1943 and part of 1944 were available.

12. The Plan is unfair and inequitable inasmuch as it is based on the finding of the Commission that

> "No system statements for 1943 of income available for payment of interest and net income are of record

for any period subsequent to the first 7 months January-July, inclusive, the system amount at the end of that period being $32,514,678 and net income $17,581,670" (p. 7).

13. The Plan is unfair and inequitable in providing for consolidation of NOTM with MOP when such consolidation is to the detriment of the 5¼% Secured Bonds by not observing the legal requirements of affording the 5¼% Secured Bonds the exact equivalent of their collateral.

14. The Plan is unfair and inequitable inasmuch as it is based on the finding of said Commission without due observance of the statutory standards prescribed by §77 (e) of the National Bankruptcy Act, as amended, that, upon a basis of separate reorganization, the total permissible capitalization of NOTM is $67,000,000.

15. The Plan is unfair and inequitable inasmuch as the Commission made no finding with respect to the character and the amount of the assets of NOTM which are not productive of earnings.

16. The Plan is unfair and inequitable inasmuch as it is based on the assumption, without any evidence therefor, that "greater future earning will (not) result from the net increase in investment accounts" (p. 42, July 4 Report). The amount and character of investments in road and equipment during the trusteeship and particularly since December 31, 1939, are important factors in calculating earnings present, past, and prospective of MOP and NOTM.

17. The Plan is unfair and inequitable inasmuch as it is based on the finding of the Commission that

> "From December 31, 1939, the day prior to the effective date of the Commission plan, to July 31, 1943, gross additions and betterments to road and to equipment of the Missouri Pacific (exclusive of two subsidiaries, Natchez & Louisiana Railway Transfer Company and Kansas-Missouri Elevator Company) have increased by $14,206,756 and $20,009,683, respectively, New Orleans $2,411,465 and $2,087,513, respectively,

International $1,145,973 and $1,346,810, respectively, and system $17,837,648 and $23,443,906, respectively.

"In the same period investment of the Missouri Pacific in road and equipment increased $22,322,770, New Orleans by $2,501,098, International by $1,175,822, and the system by $25,999,689. During this period, the system also acquired and entered in its balance sheet accounts as 'investment in affiliated companies—unpledged', the St. Joseph terminal properties, the purchase price being $3,600,000 plus $999,186 advances to affiliated companies" (pp. 9-10).

18. The Plan is unfair and inequitable inasmuch as it is based on the finding of the Commission that

"In our former report we determined a permissible maximum system capitalization of about $560,000,000 as of January 1, 1940. Since that date, according to exhibits filed at the further hearing, there has been an increase in the system investment in road and equipment of nearly $26,000,000 and an increase in accrued depreciation of about $15,000,000, indicating a net increase in investment in road and equipment of about $11,000,000. The investment of the system in affiliated companies as stated by the debtors has, during the same period, increased by about $4,600,000. Adding these sums of $11,000,000 and $4,600,000 to the total given above of $558,326,178 produces $573,926,178. It does not necessarily follow, however, and the record does not show, that greater future earnings will result from this net increase in investment accounts" (p. 42).

19. The Plan is unfair and inequitable by reason of the fact that it "assumed" the validity of an alleged claim of MOP against NOTM for inter-company advances. The allocation of securities to the said 5¼% Secured Bonds is expressly stated by the Commission to be based on the assumption of the validity of said claim. Any allocation of securities based on the validity of said claim is unfair and inequitable. The National Bankruptcy Act, as amended, requires a full judicial determination on the

merits of the validity of said claim. There has been no such determination. The claim is invalid in all respects. It is based on advances purportedly made by MOP to a dominated subsidiary NOTM. Said advances were made in the interests of MOP and not of NOTM. They would not have been made if NOTM had had the benefit of independent management. Detailed objections to the claim of MOP against NOTM are contained in Schedule A annexed hereto and made a part hereof.

20. The Plan is unfair and inequitable in permitting convertible 5½'s owned by or for the account of Alleghany Corporation, its officers, directors or stockholders to share in the allocation of securities of the reorganized company.

21. The Plan is unfair, inequitable and discriminatory in failing to provide that the claims of Alleghany, its officers, directors or stockholders be subordinated to the 5¼% Secured Bonds and to all other creditors and security holders of MOP.

22. Fairness and equity require this Court in connection with any plan of reorganization, to find that MOP, to its detriment and loss and that of its security holders, was utilized by Alleghany to expend more than $4,000,000 for the purchase of MOP stock and I. G. N. bonds and to declare and pay large sums in dividends on MOP stock; that these expenditures and payments were made solely in Alleghany's interest; and that these expenditures and payments were made at a time when MOP's current liabilities exceeded its current assets, its income was declining, it was required to borrow money for its ordinary operating purposes, and every consideration of the interests of MOP and of its security holders required the retention by MOP of all available cash for its ordinary operating and corporate purposes.

23. Fairness and equity require that this Court, in connection with any plan of reorganization, find that Alleghany converted to its own use more than $4,000,000 in cash belonging to MOP; that Alleghany, through the control it exercised over MOP, disbursed more than $4,000,000 in

cash belonging to MOP without the authorization of the Board of Directors and without any other proper corporate authorization; that Alleghany, through the control it exercised over MOP, caused fraudulent records and entries to be made by MOP and its subsidiaries in order to conceal the conversion of MOP's cash by Alleghany; and that when Alleghany sustained disastrous stock market losses in dealings with cash belonging to MOP, Alleghany transferred to a subsidiary of MOP securities having a then market value of approximately $200,000 in order to make it appear that the loss sustained by Alleghany in market speculations had been sustained by MOP or its subsidiaries.

24. The Plan is unfair and inequitable in that it allocates to a small group with close interlocking interests the selection of the Board of Directors and the reorganization managers.

25. The Plan is unfair and inequitable in permitting the reorganization managers to fix the compensation of those whose services they employ in the execution of their powers.

26. The Plan is unfair and inequitable in that it discriminates unfairly in favor of other classes of creditors as against the 5¼% Secured Bondholders.

27. The Plan is unfair and inequitable inasmuch as it is based on the unsupported finding of the Commission that the Plan will meet with the requirements of subsections (b) and (e) of Section 77 of the Bankruptcy Act as amended and will be compatible with public interest.

Claim for Equitable Treatment.

Objector claims:

(a) That a determination and finding be made of the value of the collateral securing said 5¼% Secured Bonds;

(b) That said 5¼% Secured Bonds be not required to accept securities in any reorganized company unless said

securities are found to have a value and money's worth at least the equivalent of the value of the collateral now securing said 5¼% Secured Bonds, unless the collateral is found to have a value in excess of the entire claim of said 5¼% Secured Bonds, in which event the claim shall be limited to securities having a value and money's worth measured by the principal amount of said bonds and accrued interest;

(c) That should said collateral now securing the 5¼% Secured Bonds be found to have a value less than the principal amount of the 5¼% Secured Bonds and accrued interest, then and to the extent of the difference between the value of the collateral and the total amount of the claim of said 5¼% Secured Bonds, said Bonds shall share with other security holders of MOP;

(d) That the claim of MOP against NOTM be declared invalid or, in any event, be subordinated to the claim of the 5¼% Secured Bonds;

(e) That Alleghany be not permitted to participate in the reorganization;

(f) That there be no voting trust of the stock of the new company; and

(g) That the stock provisions shall provide for cumulative voting.

Wherefore, it is respectfully prayed:

(a) That the Court disapprove the Plan of Reorganization certified to the Court by the Interstate Commerce Commission as not fair and equitable to the 5¼% Secured Bonds;

(b) That the Court refer the proceeding back to the Interstate Commerce Commission for further action in accordance with the rights of said 5¼% Secured Bondholders, and as such rights shall be determined by this Court, and as set forth in the foregoing objections and claim for equitable treatment; and that

(c) Such other and further relief be granted in the premises as shall be just and equitable.

Dated, November 21, 1944.

ANDREW W. COMSTOCK,
Objector.

DUNBAR & BIGGS,
Attorneys for
Andrew W. Comstock,
Security Building,
St. Louis, Mo.

WILLIAM H. BIGGS,
Of Counsel.

Verification.

State of Illinois, } ss.:
County of Cook, }

Andrew W. Comstock, being duly sworn, deposes and says: That he has read the foregoing objections and that the facts therein stated are true, as he verily believes.

ANDREW W. COMSTOCK.

Subscribed, in my presence, and sworn to before me, this 21st day of November, 1944.

E. B. WHITE,
Notary Public,
Cook County, Illinois.

Commission expires December 6, 1946.

Schedule A.

Detailed Objections to Claim of MOP against NOTM (hereinafter referred to as the Debtor).

1. Debtor is not indebted to MOP in any sum. The claim filed by MOP against the Debtor is invalid and the advances and Notes referred to therein do not constitute the basis of any debt or obligation on the part of the Debtor. The advances by MOP to the Debtor were made solely for the benefit and purposes of MOP and not for the benefit of the Debtor and the Demand Notes were executed solely by virtue of the control which MOP exercised over the Debtor and were solely for the benefit and purposes of MOP and not of the Debtor. The advances by MOP to the Debtor were made in violation of MOP's fiduciary obligations to the 5¼% Secured Bondholders and are invalid.

2. The 5¼% Secured Bonds were issued by MOP on or about December 1, 1926, to enable MOP to obtain the funds to pay the cost of acquiring the Capital Stock of the Debtor and MOP was enabled to sell said Bonds by reason of and on the basis of the collateral pledged therefor, now consisting of 121,460 shares of Capital Stock of the Debtor. The Indenture pursuant to which said 5¼% Secured Bonds were issued provides in Article V thereof, in part, as follows:

> "(m) The railroad company (MOP) will not do or perform, or voluntarily permit to be done or performed, any act or thing by which the validity or priority of this indenture and pledge hereunder of the Pledged Stock, as herein provided, can or may be in any way or manner impeached."

MOP failed to perform and abide by the fiduciary obligations which it undertook in said Indenture and by reason of the sale of said 5¼% Secured Bonds as aforesaid and, instead, has managed and controlled the Debtor in the interests of MOP to the injury of and at the expense of the holders of the 5¼% Secured Bonds, and has deliberately undermined the validity, the priority, and the value

of the Capital Stock of the Debtor pledged under said Indenture by a course of conduct and series of acts more particularly set forth hereinafter.

3. The facts with respect to the invalidity of the claim asserted by MOP against the Debtor, which require the disallowance and expunging of the claim as an obligation of the Debtor are, among others, as follows:

(a) Prior to the acquisition of control of the Debtor and its subsidiaries by MOP in 1925, the Debtor and its subsidiaries were prosperous railroads earning large profits after the payment of fixed charges, and accumulating substantial surpluses. Successful operation was made possible by an independent management functioning in the interest of the Debtor and its security holders.

(b) MOP acquired control of the Debtor and its subsidiaries in or about the year 1925, and from that date until the institution of these proceedings, MOP completely dominated and controlled the Debtor and its subsidiaries. During said period and until 1937, all the directors and officers of the Debtor were nominees of MOP, and were at all times subject to the direction and control of MOP.

(c) During the period from in or about 1926 to 1933, MOP managed the Debtor and its subsidiaries solely to serve its own purposes and without any regard for the interests of the Debtor, its subsidiaries, or its security holders, or the interests of the 5¼% Secured Bonds. During said period, the Debtor was never afforded the opportunity of protecting [tiself] and acting in its own interests and those of its security holders.

(d) During the aforesaid period MOP caused the Debtor and its subsidiaries to declare and pay improper and excessive dividends to MOP, the payment of which has substantially and materially impaired the value of the Debtor's Capital Stock. During the years 1926 to 1931, inclusive, MOP caused the Debtor to

declare and pay annually $1,038,000 as dividends, of which more than $900,000 annually was paid to MOP, so that for the six-year period, the Debtor paid dividends on its Capital Stock aggregating $6,200,000, of which more than $5,500,000 was declared for the benefit of and paid to MOP. MOP caused the Debtor to declare and pay such dividends although the Debtor had neither the earnings nor the cash to justify such payments as hereinafter set forth.

(e) During the six-year period when the aforesaid dividends were being paid, the Debtor reported an aggregate net income (exclusive of income from subsidiaries) of only approximately $90,000. Such income figures were over-stated, because MOP caused the Debtor to under-state accruals for depreciation, to neglect necessary repairs of road and equipment, to defer maintenance, to postpone needed improvements of road and equipment, to allow both road and equipment to deteriorate. If adjustment be made only for the under-statement of depreciation accruals, the Debtor sustained a loss during the six year period of at least $321,000 as compared with the aggregate net income, reported for the period, of $90,000. Since the reported income of the Debtor, even as over-stated did not warrant payment of the dividends referred to, the Debtor was caused to pay such dividends out of capital and its purported surplus, and in addition, MOP caused the subsidiaries of the Debtor similarly to pay improper and excessive dividends to the Debtor in order to enable the Debtor to make the payments to MOP as aforesaid. The subsidiaries of the Debtor were, as in the case of the Debtor, caused by MOP to over-state their income, to neglect necessary repairs of road and equipment, to defer maintenance, to postpone needed improvements of road and equipment and to keep inaccurate records and books of account.

(f) During most of the period in which the aforesaid payments of dividends were made, the debtor did not have funds available for such payments, and such funds were advanced to it by MOP, in many instances

for the express purpose of enabling the Debtor to make such dividend payments. During the years 1929, 1930 and 1931, the Debtor received advances from MOP aggregating $2,595,000 which advances were immediately used by the Debtor at the direction of MOP to declare and pay the aforesaid dividends. During such years, each time the Debtor was directed by MOP to pay a dividend, advances in identical amount were allegedly made by MOP to the Debtor within a day or two preceding the purported payment of the alleged dividend.

(g) The continued demands of MOP for dividend payments from the Debtor and its subsidiaries during the six years 1926 to 1931, inclusive, progressively impaired the financial condition and capital of the Debtor so that in the years 1930 and 1931, if not theretofore, the distribution of so-called dividends amounting to $2,076,000 of which about $1,800,000 were paid to MOP were illegally paid out of the capital of the Debtor at the direction of MOP. Such payments out of capital were caused to be made for the purposes and benefit of MOP in order to enable MOP to meet its own inordinately heavy and mounting financial requirements.

(h) In order to permit the payment of such dividends, MOP caused the Debtor to keep improper records and books of account so as to conceal the true state and condition of the properties, finances and affairs of the Debtor and its subsidiaries; and further caused the Debtor to violate the regulations of the Interstate Commerce Commission prescribing proper methods of accounting and reporting. All the foregoing acts were designed to and did conceal the true condition of the Debtor and were intended and calculated to over-state the income of the Debtor and its surplus and thus ostensibly place the Debtor in a position to declare and pay dividends to MOP in violation of law.

(i) Most of the facts hereinbefore set forth in this Paragraph 3 were first uncovered by the Sub-Committee of the Committee on Interstate Commerce of

the United States Senate, and were published on or about July 29, 1940 in Report No. 25, Part 9, entitled "Missouri Pacific System—Inter-Company Dividends and Advances—1926-1931". In said Report the Sub-Committee of the United States Senate Committee on Interstate Commerce stated with respect to the aforesaid transactions between MOP and the Debtor, the following:

> "* * * Some abuses were visible prior to 1930 in the relationship between Missouri Pacific and its subsidiaries; further and more intensive abuses appeared following acquisition of control by Alleghany Corporation.
>
> An independent railroad, prudently managed by directors and officials who have only the interests of the railroad itself in mind, will declare only such dividends as are justified by earnings. * * * When a railroad is controlled by a holding company, however, it may be forced to act in the interests of the holding company rather than of the railroad. It may declare dividends not justified by the condition of the railroad in order to supply income needed by the holding company. Instead of ploughing back some of its income into surplus, it may milk the surplus to pay dividends. It may juggle its accounts, lay off employees, cut payrolls to the bone, skimp on maintenance, postpone necessary improvements of road and equipment, borrow money to pay interest, defy the accounting regulations of the Interstate Commerce Commission, and finally despoil its own security-holders by declaring dividends out of capital—all in a desperate effort to continue the flow of funds from the subsidiary to the parent company.
>
> Such were the abuses which occurred in the Missouri Pacific system between 1926 and 1931."
>
> (Report, pp. 1 and 2)

Under the heading "Milking the New Orleans, Texas

and Mexico", the United States Senate Sub-Committee stated:

"* * * In theory, dividends on the N. O. T. & M. stock were payable only when justified by that railroad's financial condition. In fact, however, the parent company, through its power of control, was in a position to sacrifice its subsidiary's financial health to its own need for income.

In every year from 1926 through 1931, the Missouri Pacific caused the N. O. T. & M. to pay $1,038,000 in dividends. Each year more than $900,000 of this sum went directly to the Missouri Pacific.

The N. O. T. & M. itself never earned enough to pay these dividends. In none of the 7 years, 1926 through 1931, did the N. O. T. & M. earn more than $605,000 (exculsive of dividends from its subsidiaries, the St. Louis, Brownsville & Mexico). In 3 of the 6 years, the road showed a deficit after fixed charges. For the 6 year period considered as a whole its stated net income totaled a bare $90,000 (as against dividend declarations totaling $6,300,000).

Even the $90,000 net income figure was a considerable overstatement. Each year the N. O. T. & M. regularly included in its operating expenses a certain sum for depreciation of its equipment. Consistently, year after year, the amount charged for depreciation was inadequate. A statement from the files of the railroad itself shows that for the period 1926 through 1930 the N. O. T. & M.'s net income was overstated (through understatement of depreciation) by more than $411,000. If the railroad's depreciation had been adequately charged, it would have shown a deficit for the 6 years 1926 to 1931, of $321,000 after fixed charges. Yet during this period the Missouri Pacific took $5,580,000 in dividends out of the N. O. T. & M.

* * * * * * *

The details of the process by which the Missouri Pacific milked the N. O. T. & M. and the N. O. T. & M. in turn milked the Brownsville are revealed in a series of letters introduced into the record of this sub-committee."

(Report, pp. 2 and 3)

The letters referred to are attached as an Appendix to part XII of the Hearings before the Sub-Committee of the Senate Committee headed "Missouri Pacific Railroad Company, Purchase of System Securities through Subsidiaries, Inter-Company Dividends and Advances, Accounting Methods." Most of these letters were written to or by Mr. L. W. Baldwin, then President of both MOP and the Debtor, and now operating head of both railroads.

(j) Between 1925 and 1933, MOP caused the Debtor to embark upon and finance an expansion program and to make investments for the benefit of MOP, thereby heavily increasing the burden of the debt structure which the Debtor was required to service and sustain. As a result thereof, and of the other matters herein set forth, the financial structure of the Debtor became impaired and its working capital exhausted, thus, among other things, injuring and impairing the value of the Capital Stock of the Debtor. In connection therewith and the other matters herein set forth, MOP purportedly made advances to the Debtor and caused the Debtor to pay large sums of money as interest thereon to MOP, thereby further depleting the working capital of the Debtor necessary to carry on its basic operations and further, among other things, impairing the value of the Capital Stock of the Debtor. In addition, during said period, MOP caused the Debtor to neglect necessary repairs of road and equipment, to defer maintenance, to postpone needed improvements of road and equipment, and to allow both road and equipment to deteriorate. During said period MOP caused the Debtor to pay to MOP excessive rentals for freight cars used by the Debtor and caused

the Debtor to bear an unfair and disproportionate amount of the expenses of MOP. Similarly during said period, MOP wrongfully diverted or caused to be diverted from the Debtor's lines and those of its subsidiaries to the lines of MOP substantial amounts of valuable and profitable traffic originating on lines of and property belonging to the Debtor and its subsidiaries, which traffic so diverted could and should have been moved over the lines of the Debtor or its subsidiaries.

4. The foregoing wrongful acts of spoliation and waste of the assets of the Debtor have caused financial losses to the Debtor and its subsidiaries in excess of the claim heretofore filed herein by MOP in the amount of $10,565,226.78, including any claim for interest thereon. The alleged advances which form the basis of such claim filed by MOP herein are invalid and do not constitute an obligation of the Debtor. Such claim filed by MOP herein in the amount of $10,565,226.78, including any claim for interest thereon, should therefore be disallowed and expunged as a claim against the Debtor.

5. The purported advances by MOP to the Debtor were made as an integral part of a plan designed to further the interests of MOP at the expense of and in violation of MOP's fiduciary obligations to the holders of the 5¼% Secured Bonds.

6. The claim filed by MOP against the Debtor has not been allowed by any order of this Court entered herein.

7. The time within which objections may be filed to the claim of MOP against the Debtor has not expired or lapsed.

8. An order made by Honorable C. B. Faris, District Judge then in charge of these proceedings, dated May 13, 1933 and filed May 15, 1933, provided among other things for the filing of claims herein, for the reference of such claims and objections thereto to a Special Master and fur-

ther provided that objections to the allowance of any claim "shall be filed within such time and with such particularity as the Master in his discretion may prescribe." Neither this Court nor the Master designated by it has specified the particularity or the time whereby or within which objections to claims, including that of MOP, were to be filed. The Master previously designated by this Court to report with respect to claims has since died and no other Master has been designated to act in his place or stead. The records disclose that there are claims that have not yet been disposed of. As recently as March, 1941, the Trustee obtained authority to settle some of the many claims still remaining undetermined and undisposed of.

Further, by order of this Court, claims arising out of the disaffirmance by the Trustee of the Debtor's contracts or arrangements may be filed at any time within 30 days after such disaffirmance. By several orders of this Court, the time in which the Trustee may elect to affirm or to disaffirm contracts or arrangements of the Debtor has been extended upon applications of the Trustee from time to time and the latest of such extensions was to October 31, 1944. There has been no waiver of any objection to the MOP claim nor any acquiescence with respect to said claim. On the contrary, the validity of the claim has been questioned by petitions filed herein, none of which has been considered on the merits as hereinafter more fully appears.

9. Guy A. Thompson, as Trustee of the Debtor, has made no study or investigation of the MOP claim, has interposed no objections thereto, and has failed to take any action whatever to expunge the claim and to assert the rights which the Debtor has against MOP. No hearing was ever ordered nor has any hearing ever been held on said claim filed by MOP herein. Neither the facts set forth in paragraph 3 hereof, nor any other facts bearing on the validity or sufficiency of MOP's claim have ever been made the subject of an investigation by the Trustee or by the Interstate Commerce Commission. So far as is known to the undersigned, neither the Trustee nor the Debtor nor the Commission has taken any action on the findings of

the Senate Sub-Committee referred to above; nor have such findings ever been reported to the Court by either the Trustee or the Commission.

10. Guy A. Thompson, as Trustee, has nominated and caused to be elected to the Board of Directors of the Debtor since the year 1937, persons in his employ as Trustee and subject to his supervision and control. At all times since the inception of these proceedings the Debtor has been without independent representation herein.

11. In 1937 and again in 1940, Guy A. Thompson, as Trustee of MOP, and all parties in interest who have heretofore been permitted to intervene generally in these proceedings by the several orders of this Court were put on notice of the conflict of trust and interest existing between Guy A. Thompson, as Trustee of MOP and as Trustee of the Debtor, and of some of the facts set forth herein respecting the invalidity of the claim of MOP against the Debtor. In 1937, the Irving Trust Company, as Trustee of the first mortgage bonds of the Debtor, and the Walker Committee, representing those bonds, filed petitions alleging in part some of the facts herein set forth, and asserting that the claim of MOP against the Debtor is invalid. Said petitions on file in these proceedings are made a part hereof as though fully set forth herein. Although answers to said petitions were filed, no hearings have ever been held upon the issues presented by such petitions and answers. In connection with said petitions, the Court entered an order which provided that:

> "Hearing(s) on petitions are continued indefinitely with right to any party in interest to have the petitions re-docketed for hearing on thirty days notice to all the other parties in interest" (pp. 7023 and 7024 of printed record of court proceedings).

No order of dismissal of said petitions has ever been sought by Guy A. Thompson, as Trustee, or by any of the parties. In 1940, as set forth hereinabove, the Sub-Committee of the United States Committee on Interstate Commerce published its report containing findings bearing on the in-

validity of the MOP claim, after the Interstate Commerce Commission had promulgated its first Plan of Reorganization in these proceedings, and as heretofore appears herein, no action with respect thereto has been taken herein.

(Petition of Andrew W. Comstock in the Name of Guy A. Thompson, as Trustee of Debtor, to file Objections to Claim of Missouri Pacific Railroad Company, etc.)

(Filed November 17, 1944.)

To the Honorable, the Judges of the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri.

The petition of Andrew W. Comstock residing at Evanston, Illinois, on his own behalf as the holder of $80,000. principal amount of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds of various maturities, and on behalf of fourteen owners and holders of at least $900,000. additional principal amount of said 5¼% Secured Serial Gold Bonds, for whom petitioner is duly authorized to file this petition, and on behalf of all other owners and holders of said 5¼% Secured Serial Gold Bonds, respectfully represents:

On Information and Belief:

1. The Missouri Pacific Railroad Company, (hereinafter referred to as MOP), is, and at all times hereinafter mentioned was, a railroad corporation duly organized and existing under the laws of the State of Missouri.

2. New Orleans, Texas & Mexico Railway Company, (hereinafter referred to as the Debtor), is, and at all times hereinafter mentioned was, a railroad corporation duly organized and existing under the laws of the State of Louisiana. As more particularly set forth hereinafter, voting stock of the Debtor sufficient to assure effective

control has been owned by MOP since in or about the year 1925.

3. At the same time that MOP filed herein a petition under Section 77 of the National Bankruptcy Act, as amended, MOP directed and caused the Debtor to file a similar petition herein under the aforesaid Section 77. Subsequently, the subsidiaries of the Debtor were directed and caused to file similar petitions herein under the said Section 77.

4. By order of this Court heretofore entered herein, Guy A. Thompson and L. W. Baldwin were originally appointed co-Trustees of MOP, of the Debtor, and of the Debtor's subsidiaries. Thereafter Baldwin resigned as such Co-Trustee, and Thompson was appointed and is now acting as sole Trustee of MOP, the Debtor, and its subsidiaries.

5. The Debtor now has outstanding the following securities: $40,615,900 principal amount of First Mortgage Bonds (exclusive of $1,900,000 of said Bonds purportedly pledged with MOP); $2,354,100 principal amount of 5% non-Cumulative Income Mortgage Bonds; and 148,329 shares of Capital Stock, which Stock has sole voting power.

6. Of the aforesaid 148,329 shares of Capital Stock of the Debtor outstanding, 139,731 shares, or approximately 94% thereof, are owned of record by MOP.

7. The 5¼% Secured Serial Gold Bonds of MOP (hereinafter referred to as the 5¼% Secured Bonds) are now outstanding in the principal amount of $12,140,000 and are secured by a pledge by MOP of 121,460 shares, or approximately 82%, of the Capital Stock of the Debtor. MOP has defaulted in the payment of interest on and principal of said 5¼% Secured Bonds. Accrued and unpaid interest on said Bonds to January 1, 1943 amounted to $6,426,613, making the aggregate claim of the holders of 5¼% Secured Bonds $18,566,613 as of said date.

8. By reason of the defaults in the payment of interest and principal on said 5¼% Secured Bonds, the owners

and holders of said Bonds have, under the terms of the Indenture pursuant to which said Bonds were issued, the right to foreclose the lien on the 121,460 shares of the Capital Stock of the Debtor pledged to secure said Bonds. By order of this Court heretofore entered herein, the foreclosure of such lien has been stayed.

9. Petitioner and all owners and holders of 5¼% Secured Bonds have a direct and immediate interest in the estate of the Debtor, in its Capital Stock pledged as set forth hereinabove, in the right of said Capital Stock to share in the assets of the Debtor and in any claims filed against the estate of the Debtor herein.

10. MOP filed a claim in these proceedings against the Debtor in the amount of $10,565,226.78. In said claim, MOP alleges that such amount was advanced to the Debtor from March, 1929, to February, 1933, inclusive, and that $9,955,226.78 of such advances are represented by Demand Notes, dated January 27, 1933 and February 28, 1933. Accrued and unpaid interest claimed to be due on said advances and Notes amounted to $5,919,000 as of December 31, 1943.

11. Debtor is not indebted to MOP in any sum. The claim filed by MOP against the Debtor is invalid and the advances and Notes referred to therein do not constitute the basis of any debt or obligation on the part of the Debtor. The advances by MOP to the Debtor were made solely for the benefit and purposes of MOP and not for the benefit of the Debtor and the Demand Notes were executed solely by virtue of the control which MOP exercised over the Debtor and were solely for the benefit and purposes of MOP and not of the Debtor. The advances by MOP to the Debtor were made in violation of MOP's fiduciary obligations to the 5¼% Secured Bondholders and are invalid and, in any event, must be subordinated to the claims of said bondholders.

12. The 5¼% Secured Bonds were issued by MOP on or about December 1, 1926, to enable MOP to obtain the

funds to pay the cost of acquiring the Capital Stock of the Debtor and MOP was enabled to sell said Bonds by reason of and on the basis of the collateral pledged therefor, consisting of said 121,460 shares of Capital Stock of the Debtor. The Indenture pursuant to which said 5¼% Secured Bonds were issued provides in Article V thereof, in part, as follows:

> "(m) The railroad company (MOP) will not do or perform, or voluntarily permit to be done or performed, any act or thing by which the validity or priority of this indenture and pledge hereunder of the Pledged Stock, as herein provided, can or may be in any way or manner impeached."

MOP failed to perform and abide by the fiduciary obligations which it undertook in said Indenture and by reason of the sale of said 5¼% Secured Bonds as aforesaid and, instead, has managed and controlled the Debtor in the interests of MOP to the injury of and at the expense of the holders of the 5¼% Secured Bonds, and has deliberately undermined the validity, the priority, and the value of the Capital Stock of the Debtor pledged under said Indenture by a course of conduct and series of acts more particularly set forth hereinafter.

13. The facts with respect to the validity of the claim asserted by MOP against the Debtor, which require the disallowance and expunging of the claim as an obligation of the Debtor and in any event, requiring its subordination to the claims of the holders of the 5¼% Secured Bonds, are, among others, as follows:

(a) Prior to the acquisition of control of the Debtor and its subsidiaries by MOP in 1925, the Debtor and its subsidiaries were prosperous railroads earning large profits after the payment of fixed charges, and accumulating substantial surpluses. Successful operation was made possible by an independent management functioning in the interest of the Debtor and its security holders. A copy of the consolidated balance sheet of the Debtor as at December 31, 1925 is annexed hereto as Exhibit A and made a part hereof.

(b) MOP acquired control of the Debtor and its subsidiaries in or about the year 1925, and from that date until the institution of these proceedings, MOP completely dominated and controlled the Debtor and its subsidiaries. During said period and until 1937, all the directors and officers of the Debtor were nominees of MOP, and were at all times subject to the direction and control of MOP.

(c) During the period from in or about 1926 to 1933, MOP managed the Debtor and its subsidiaries solely to serve its own purposes and without any regard for the interests of the Debtor, its subsidiaries, or its security holders, or the interests of the 5¼% Secured Bonds. During said period, the Debtor was never afforded the opportunity of protecting itself and acting in its own interests and those of its security holders.

(d) During the aforesaid period MOP caused the Debtor and its subsidiaries to declare and pay improper and excessive dividends to MOP, the payment of which has substantially and materially impaired the value of the Debtor's Capital Stock. During the years 1926 to 1931, inclusive, MOP caused the Debtor to declare and pay annually $1,038,000 as dividends, of which more than $900,000 annually was paid to MOP, so that for the six-year period, the Debtor paid dividends on its Capital Stock aggregating $6,200,000, of which more than $5,500,000 was declared for the benefit of and paid to MOP. MOP caused the Debtor to declare and pay such dividends although the Debtor had neither the earnings nor the cash to justify such payments as hereinafter set forth.

(e) During the six-year period when the aforesaid dividends were being paid, the Debtor reported an aggregate net income (exclusive of income from subsidiaries) of only approximately $90,000. Such income figures were overstated, because MOP caused the Debtor to under-state accruals for depreciation, to neglect necessary repairs of road and equipment, to defer maintenance, to postpone needed improvements of road and equipment, to allow both road and equipment to deteriorate. If adjustment be made only for the under-statement of depreciation

accruals, the Debtor sustained a loss during the six-year period of at least $321,000 as compared with the aggregate net income, reported for the period, of $90,000. Since the reported income of the Debtor, even as over-stated, did not warrant payment of the dividends referred to, the Debtor was caused to pay such dividends out of capital and its purported surplus, and in addition, MOP caused the subsidiaries of the Debtor similarly to pay improper and excessive dividends to the Debtor in order to enable the Debtor to make the payments to MOP as aforesaid. The subsidiaries of the Debtor were, as in the case of the Debtor, caused by MOP to overstate their income, to neglect necessary repairs of road and equipment, to defer maintenance, to postpone needed improvements of road and equipment, and to keep inaccurate records and books of account.

(f) During most of the period in which the aforesaid payments of dividends were made, the Debtor did not have funds available for such payments, and such funds were advanced to it by MOP, in many instances for the express purpose of enabling the Debtor to make such dividend payments. During the years 1929, 1930 and 1931, the Debtor received advances from MOP aggregating $2,595,000, which advances were immediately used by the Debtor at the direction of MOP to declare and pay the aforesaid dividends. During such years, each time the Debtor was directed by MOP to pay a dividend, advances in identical amount were allegedly made by MOP to the Debtor within a day or two preceding the purported payment of the alleged dividend.

(g) The continued demands of MOP for dividend payments from the Debtor and its subsidiaries during the six years 1926 to 1931, inclusive, progressively impaired the financial condition and capital of the Debtor so that in the years 1930 and 1931, if not theretofore, the distributions of so-called dividends amounting to $2,076,000 of which about $1,800,000 were paid to MOP were illegally paid out of the capital of the Debtor at the direction of MOP. Such payments out of capital were caused to be made for the purposes and benefit of MOP in order to enable

MOP to meet its own inordinately heavy and mounting financial requirements.

(h) In order to permit the payment of such dividends, MOP caused the Debtor to keep improper records and books of account so as to conceal the true state and condition of the properties, finances and affairs of the Debtor and its subsidiaries; and further caused the Debtor to violate the regulations of the Interstate Commerce Commission prescribing proper methods of accounting and reporting. All the foregoing acts were designed to and did conceal the true condition of the Debtor and were intended and calculated to over-state the income of the Debtor and its surplus and thus ostensibly place the Debtor in a position to declare and pay dividends to MOP in violation of law.

(i) Most of the facts hereinbefore set forth in this Paragraph 13 were first uncovered by the Sub-Committee of the Committee on Interstate Commerce of the United States Senate, and were published on or about July 25, 1940 in Report No. 25, Part 9, entitled "Missouri Pacific System—Inter-Company Dividends and Advances—1926-1931", a copy of which Report is annexed hereto as Exhibit B and made a part hereof. In said Report the Sub-Committee of the United States Senate Committee on Interstate Commerce stated with respect to the aforesaid transactions between MOP and the Debtor, the following:

> "* * * Some abuses were visible prior to 1930 in the relationship between Missouri Pacific and its subsidiaries; further and more intensive abuses appeared following acquisition of control by Alleghany Corporation.
>
> An independent railroad, prudently managed by directors and officials who have only the interests of the railroad itself in mind, will declare only such dividends as are justified by earnings. * * * When a railroad is controlled by a holding company, however, it may be forced to act in the interests of the holding company rather than of the railroad. It may declare dividends not justified by the condition of the railroad in order to supply income needed by the holding

company. Instead of ploughing back some of its income into surplus, it may milk the surplus to pay dividends. It may juggle its accounts, lay off employees, cut payrolls to the bone, skimp on maintenance, postpone necessary improvements of road and equipment, borrow money to pay interest, defy the accounting regulations of the Interstate Commerce Commission, and finally despoil its own securityholders by declaring dividends out of capital—all in a desperate effort to continue the flow of funds from the subsidiary to the parent company.

Such were the abuses which occurred in the Missouri Pacific system between 1926 and 1931."

(Report, pp. 1 and 2)

Under the heading "Milking the New Orleans, Texas and Mexico", the United States Senate Sub-Committee stated:

"• • • In theory, dividends on the N. O. T. & M. stock were payable only when justified by that railroad's financial condition. ' In fact, however, the parent company, through its power of control, was in a position to sacrifice its subsidiary's financial health to its own need for income.

In every year from 1926 through 1931, the Missouri Pacific caused the N. O. T. & M. to pay $1,038,000 in dividends. Each year more than $900,000 of this sum went directly to the Missouri Pacific.

The N. O. T. & M. itself never earned enough to pay these dividends. In none of the 7 years, 1926 through 1931, did the N. O. T. & M. earn more than $605,000 (exclusive of dividends from its subsidiaries, the St. Louis, Brownsville & Mexico). In 3 of the 6 years, the road showed a deficit after fixed charges. For the 6 year period considered as a whole its stated net income totaled a bare $90,000 (as against dividend declarations totaling $6,300,000).

Even the $90,000 net income figure was a considerable overstatement. Each year the N. O. T. & M. regularly included in its operating expenses a certain

sum for depreciation of its equipment. Consistently, year after year, the amount charged for depreciation was inadequate. A statement from the files of the railroad itself shows that for the period 1926 through 1930 the N. O. T. & M.'s net income was overstated (through understatement of depreciation) by more than $411,000. If the railroad's depreciation had been adequately charged, it would have shown a deficit for the 6 years 1926 to 1931, of $321,000 after fixed charges. Yet during this period the Missouri Pacific took $5,580,000 in dividends out of the N. O. T. & M.

* * * * * * *

The details of the process by which the Missouri Pacific milked the N. O. T. & M. and the N. O. T. & M. in turn milked the Brownsville are revealed in a series of letters introduced into the record of this sub-committee."

(Report, pp. 2 and 3.)

The letters referred to are attached as an Appendix to Part XII of the Hearings before the Sub-Committee of the Senate Committee headed "Missouri Pacific Railroad Company, Purchase of System Securities through Subsidiaries, Inter-Company Dividends and Advances, Accounting Methods". They are annexed hereto as Exhibit C and made a part hereof. Most of these letters were written to or by Mr. L. W. Baldwin, then President of both MOP and the Debtor, and now operating head of both railroads.

(j) Between 1925 and 1933, MOP caused the Debtor to embark upon and finance an expansion program and to make investments for the benefit of MOP, thereby heavily increasing the burden of the debt structure which the Debtor was required to service and sustain. As a result thereof, and of the other matters herein set forth, the financial structure of the Debtor became impaired and its working capital exhausted, thus, among other things, injuring and impairing the value of the Capital Stock of the Debtor. In connection therewith and the other matters herein set forth, MOP purportedly made advances to the Debtor and caused the Debtor to pay large sums of money as interest thereon to MOP, thereby further depleting the

working capital of the Debtor necessary to carry on its basic operations and further, among other things, impairing the value of the Capital Stock of the Debtor. In addition, during said period, MOP caused the Debtor to neglect necessary repairs of road and equipment, to defer maintenance, to postpone needed improvements of road and equipment, and to allow both road and equipment to deteriorate. During said period MOP caused the Debtor to pay to MOP excessive rentals for freight cars used by the Debtor and caused the Debtor to bear an unfair and disproportionate amount of the expenses of MOP. Similarly during said period, MOP wrongfully diverted or caused to be diverted from the Debtor's lines and those of its subsidiaries to the lines of MOP substantial amounts of valuable and profitable traffic originating on lines of and properly belonging to the Debtor and its subsidiaries, which traffic so diverted could and should have been moved over the lines of the Debtor or its subsidiaries.

14. The foregoing wrongful acts of spoilation and waste of the assets of the Debtor have caused financial losses to the Debtor and its subsidiaries in excess of the claim heretofore filed herein by MOP in the amount of $10,565,226.78, including any claim for interest thereon. The alleged advances which form the basis of such claim filed by MOP herein are invalid and do not constitute an obligation of the Debtor. Such claim filed by MOP herein in the amount of $10,565,226.78, including any claim for interest thereon, should therefore be disallowed and expunged as a claim against the Debtor.

15. The purported advances by MOP to the Debtor were made as an integral part of a plan designed to further the interests of MOP at the expense of and in violation of MOP's fiduciary obligations to the holders of the 5¼% Secured Bonds.

16. Petitioner sought to present the matters complained of herein to the Interstate Commerce Commission in connection with the Commission's hearings on plans of reorganization of MOP and of the Debtor. The Interstate Commerce Commission, however, has stated that it "as-

sumed" that the claim filed by MOP against the Debtor was valid, and any objections thereto "should be left to litigation in the courts" (Missouri Pacific Railroad Company Reorganization, Supplemental Report, dated July 4, 1944, p. 60). At a hearing preceding the issuance of the aforesaid Supplemental Report, the Director of Finance of said Commission—before whom the hearing was conducted—denied an offer to introduce evidence bearing upon the invalidity of the claim stating that: "If there is something wrong with the claim, you go to court about it" (Record of testimony before Interstate Commerce Commission, October 19, 1943, p. 5158). The purpose of this petition is to take such steps as may be legally necessary to bring about a judicial determination on the merits of the claim filed by MOP against the Debtor.

17. The claim filed by MOP against the Debtor has not been allowed by any order of this Court entered herein.

18. The time within which objections may be filed to the claim of MOP against the Debtor has not expired or lapsed.

19. An order made by Honorable C. B. Faris, District Judge then in charge of these proceedings, dated May 13, 1933, and filed May 15, 1933, provided among other things for the filing of claims herein, for the reference of such claims and objections thereto to a Special Master and further provided that objections to the allowance of any claim "shall be filed within such time and with such particularity as the Master in his discretion may prescribe." Neither this Court nor the Master designated by it has specified the particularity or the time whereby or within which objections to claims, including that of MOP, were to be filed. The Master previously designated by this Court to report with respect to claims has since died and no other Master has been designated to act in his place or stead. The records disclose that there are claims that have not yet been disposed of. As recently as March 1941, the Trustee obtained authority to settle some of the many claims still remaining [undertermined] and undisposed of.

Further, by order of this Court, claims arising out of the disaffirmance by the Trustee of the Debtor's contracts or arrangements may be filed at any time within 30 days after such disaffirmance. By several orders of this Court, the time in which the Trustee may elect to affirm or to disaffirm contracts or arrangements of the Debtor has been extended upon applications of the Trustee from time to time and the latest of such extensions was to October 31, 1944. There has been no waiver of any objection to the MOP claim nor any acquiescence with respect to said claim. On the contrary, the validity of the claim has been questioned by petitions filed herein, none of which has been considered on the merits as hereinafter more fully appears.

20. Under the several provisions of law, including Section 48 (a) (8) of the National Bankruptcy Act, as amended, Guy A. Thompson, as Trustee of the Debtor, is charged with the duty of examining all proofs of claims and objecting to the allowance of such claims as are improper. Such examination by the Trustee, and by this Court, is especially necessary and must be particularly rigorous and comprehensive in the case of a claim filed by a parent corporation against a dominated and controlled subsidiary in reorganization proceedings. Without such examination, no order may be entered allowing such claim.

21. Guy A. Thompson, as Trustee of the Debtor, has made no study or investigation of the MOP claim, has interposed no objections thereto, and has failed to take any action whatever to expunge the claim and to assert the rights which the Debtor has against MOP. No hearing was ever ordered nor has any hearing ever been held on said claim filed by MOP herein. Neither the facts set forth in paragraph 13 hereof, nor any other facts bearing on the validity or sufficiency of MOP's claim have ever been made the subject of an investigation by the Trustee or by the Interstate Commerce Commission. So far as is known to Petitioner, neither the Trustee of the Debtor nor the Commission has taken any action on the findings of the Senate Sub-Committee referred to above; nor have such findings ever been reported to the Court by either the Trustee or the Commission.

22. Guy A. Thompson as Trustee, has nominated and caused to be elected to the Board of Directors of the Debtor since the year 1937, persons in his employ as Trustee and subject to his supervision and control. At all times since the inception of these proceedings the Debtor has been without independent representation herein.

23. Petitioner has not requested Guy A. Thompson, as Trustee of the Debtor, to institute this proceeding or an investigation with regard to the claim filed by MOP against the Debtor because said Trustee, by virtue of the fact that he is also Trustee of MOP, is in a position of conflict of trust and is therefore disqualified to take any action which would be adverse to the interests of MOP. Said Guy A. Thompson has occupied such conflicting positions of trust since the inception of these proceedings, and, therefore, any request addressed to said Trustee would be futile.

24. In 1937 and again in 1940, Guy A. Thompson, as Trustee of MOP, and all parties in interest who have heretofore been permitted to intervene generally in these proceedings by the several orders of this Court, were put on notice of the conflict of trust and interest existing between Guy A. Thompson, as Trustee of MOP and as Trustee of the Debtor, and of some of the facts set forth herein respecting the invalidity of the claim of MOP against the Debtor. In 1937, the Irving Trust Company as Trustee of the first mortgage bonds of the Debtor and the Walker Committee, representing those bonds, filed petitions alleging in part some of the facts herein set forth, and asserting that the claim of MOP against the Debtor is invalid. Said petitions on file in these proceedings are made a part hereof as though fully set forth herein. Although answers to said petitions were filed, no hearings have ever been held upon the issues presented by such petitions and answers. An order was entered by this Court continuing the hearings on the petitions indefinitely, as more particularly hereinafter appears. No order of dismissal of said petitions has ever been sought by Guy A. Thompson, as Trustee, or by any of the parties. In 1940, as set forth

hereinabove, the Sub-Committee of the United States Committee on Interstate Commerce published its report containing findings bearing on the invalidity of the MOP claim, after the Interstate Commerce Commission had promulgated its first Plan of Reorganization in these proceedings, and as heretofore appears herein, no action with respect thereto has been taken herein.

25. A Plan of Reorganization of MOP, the Debtor and other companies was promulgated by the Interstate Commerce Commission on April 9, 1940. Subsequently, hearings thereon were held by this Court and appeals were taken from the Court's decree to the United States Circuit Court of Appeals. Those appeals were pending until they were remanded to this Court in July, 1943, whereupon this Court referred the 1940 plan back to the Commission "for further proceedings" including "the proposal of new plans". At the hearings before the Commission on October 19, 1943, Petitioner raised the question of the validity of MOP's claim, but as appears hereinabove, Petitioner was directed to present the question to this Court.

26. This proceeding is necessary in the interests of the Estate of the Debtor, and in the interests of Petitioner and all other owners and holders of 5¼% Secured Bonds for, among others, the following reasons in addition to those set forth hereinabove:

(a) The Interstate Commerce Commission found that the Debtor was solvent in 1940. It ascribed the value of at least $67,000,000 to the Debtor for purposes of permissible capitalization under the plan propounded by the Commission in 1940. (Commission Report, p. 38) The position of the Debtor has improved most substantially in the subsequent years. After the claims of its first mortgage and income mortgage bondholders have been provided for, the remaining assets in the estate of the Debtor inure and will inure to the owners of claims and securities junior to the bondholders, including the claims of the Debtor's Capital Stock, on which petitioner, together with other holders of the 5¼% Secured Bonds have as collateral security 121,460 shares out of 148,329 shares.

(b) In its Supplemental Report dated July 4, 1944, with respect to the modified Plan of Reorganization of MOP, the Debtor and other companies, the Interstate Commerce Commission stated that Petitioner and other holders of the 5¼% Secured Bonds are entitled to new Class A common stock of the reorganized Company "by virtue of collateral security consisting of New Orleans capital stock". In allocating the type of security and the amount to the 5¼% Secured Bonds, the Commission took into account "the amount of the indebtedness of the New Orleans, and the application of the surplus cash in the New Orleans treasury to the retirement of part of this indebtedness" (Supplemental Report, pp. 58-59). The Commission "assumed" that the MOP claim was a valid indebtedness of the Debtor stating:

> "The invalidity of any part of these advances has never been established and we will assume for the purposes of this proceeding that they are valid obligations of the New Orleans in determining the right of and the extent to which holders of Missouri Pacific 5-¼% and the New Orleans stockholders should participate in the plan of reorganization" (Supplemental Report, p. 60)".

(c) Since the Debtor is wholly solvent, the value of the shares of its Capital Stock which are pledged as collateral for the 5-¼% Secured Bonds, will be and is dependent upon the value of the assets remaining in the estate of the Debtor after its creditors have been provided for. That value is inescapably dependent, in turn, upon the size and magnitude of the claims that are allowed against the estate of the Debtor. If the claim of MOP, which, with interest purportedly accrued and unpaid, will amount to more than $16,000,000, be allowed as a claim against the assets of the Debtor, or be assumed, without determination, to be valid for the purposes of the Plan of Reorganization, said claim will substantially and materially decrease the assets to which Petitioner and all other owners and holders of 5-¼% Secured Bonds would be entitled. If said MOP claim is disallowed and expunged, the value of the stock of the Debtor will be greatly enhanced and,

therefore, the treatment which Petitioner and all other owners and holders of 5-¼% Secured Bonds would be entitled to receive in any Plan of Reorganization, or otherwise, would be very substantially improved and radically different.

(d) The judicial determination on the merits of the matters presented in this Petition is an indispensable prerequisite to the exercise of an informed judgment as required by the National Bankruptcy Act, as amended, with respect to the fairness or equity of any treatment proposed to be given to Petitioner and other holders of the 5-¼% Secured Bonds in any proposed plan of reorganization herein. Such determination is especially compelling in the circumstances herein revealed in the light of the opinion expressed by the Honorable C. B. Faris, District Judge, with respect to a related matter in these proceedings, to wit:

> "For to me it is plain that the Congress intended to stop a practice among railroads and their exploiters and manipulators which has had much to do with making the financial history of railroads the most indecent and sordid chapter ever written in this or any other nation" (Court Opinion No. 41, p. 2996).

(e) This action by Petitioner would not be necessary if Debtor had had the benefit of an independent Trustee free from conflicting interests. Petitioner is obliged to file this petition in order to avoid the harm to security-holders which will flow from the conflict of interest in which the Trustee finds himself and which he has done nothing to correct.

27. The proof with respect to most of the matters referred to in this petition consists largely of documentary evidence, including books, records, journals, ledgers, correspondence and papers in the possession or control of the Debtor, of MOP and of said Guy A. Thompson as Trustee of the estates of the Debtor and MOP.

28. No previous application for the relief prayed for

herein has been made by petitioner. Reference however may be made to the following:

(a) As appears hereinabove, in 1937 the petitions of the Irving Trust Company, as Trustee, and the Walker Committee representing the First Mortgage Bonds of the Debtor were never considered on the merits. The relief requested in said petitions was not the filing of objections to, or the expunging of the claim of, MOP against the Debtor, but the removal of Guy A. Thompson as Trustee of the Debtor. In connection with said petitions, the Court entered an order which provided that:

> "Hearing(s) on petitions are continued indefinitely with right to any party in interest to have the petitions re-docketed for hearing on 30 days notice to all the other parties in interest". (pp. 7023 and 7024 of printed record of court proceedings)

(b) On July 21, 1944, a petition was presented by Ernest Lee Foley, a holder and owner of 5-¼% Secured Serial Gold Bonds for leave to intervene and for the purpose of filing a petition which prayed that a proceeding be instituted for an accounting by MOP to the Debtor, and the return of securities, and in connection therewith that the claim filed by MOP against the Debtor be expunged. This Court denied the motion for intervention without opinion on August 3, 1944, without any consideration of the claim of MOP against the Debtor on the merits.

29. Petitioner believes that he has a clear right to file objections to the claim filed by MOP against the Debtor. In order to avoid any procedural question with respect to such right and because of the disqualification of the Trustee in the premises, Petitioner prays for leave to act in the name of Guy A. Thompson, as Trustee of the Debtor, in order to file and prosecute objections to the claim of MOP against the Debtor and to have said claim expunged. Petitioner hereby offers and consents to indemnify said Guy R. Thompson, as such Trustee, against all damage, cost and expense.

30. This petition is presented pursuant to the several

provisions of the National Bankruptcy Act, as amended, including but not limited to Sections 77(c), (7, 13) and 57(d), 57(k) thereof, pursuant to the Federal Rules of Civil Procedure, including but not limited to Rule 24 thereof, pursuant to Orders Nos. 19 and 235, of this Court entered in these proceedings, dated respectively May 13, 1933 and September 26, 1934, and pursuant to such other provisions of law, rules of Court, general orders in bankruptcy and orders of this Court as may be applicable in these premises.

Wherefore, your petitioner prays for an order granting leave to Petitioner in the name of Guy A. Thompson, as Trustee of the Debtor (a) to file objections to the claim of MOP against the Debtor heretofore filed herein; (b) to participate in any and all proceedings, whether before a Special Master to be designated by this Court, or before this Court, wherein the validity or sufficiency of the said claims of Mop against the Debtor is or may be involved; (c) to take any and all action, including any and all proceedings by way of review and appeal, necessary or proper to establish said objections, whether before a Special Master to be designated by this Court, before this Court, or before any appellate court; (d) granting leave to Petitioner to intervene specially in the above entitled proceeding for the foregoing purposes; and (e) for such other and different relief as to this Court may seem just and proper.

ANDREW W. COMSTOCK,
Petitioner.

DUNBAR & BIGGS.

Verification.

State of Illinois } ss.
County of Cook }

Andrew W. Comstock, being duly sworn, deposes and says: that he is the petitioner in the above entitled proceeding; that he has read the foregoing petition, and knows the contents thereof; that the same are true as stated, except as to matter and things expressly stated to be on information and belief, and that as to those matters and things, he believes them to be true.

ANDREW W. COMSTOCK.

Subscribed, in my presence, and sworn to before me, by the affiant above named, this 15th day of November, 1944.

E. B. WHITE.

My commission expires Dec. 6, 1946.

Exhibit "A".

New Orleans, Texas & Mexico Ry.

Consolidated Balance Sheet, December 31, 1925.
(Including Texas Subsidiaries)

Assets

Investments—	
Investment in road and equipment	$43,413,837
Improvements on leased railway property	2,102
Miscellaneous physical property	389,354
Investments in affiliated companies	9,287,904
Other investments	9,022
Total	$53,102,219
Current Assets—	
Cash	$ 2,221,118
Time drafts and deposits	5,000
Special deposits	214,104
Loans and bills receivable	3,255
Traffic and car service balances	675,126
Net balance from agents and conductors	132,544
Miscellaneous accounts receivable	750,477
Material and supplies	1,781,266
Interest and dividends receivable	346
Other current assets	23,879
Total	$ 5,807,115
Deferred Assets—	
Working fund advances	$ 4,859
Other deferred assets	173,955
Total	$ 178,814
Unadjusted Debits—	
Rents and insurance premiums paid in advance	$ 20,816
Other unadjusted debits	1,194,580
Total	$ 1,215,396
Grand Total	$60,303,544

Liabilities

Capital stock		$15,000,000
Funded debt		32,437,800
Current Liabilities—		
Traffic and car service balances	$	528,157
Audited accounts and wages unpaid		1,541,368
Miscellaneous accounts payable		48,092
Interest matured unpaid		47,151
Unmatured interest accrued		487,624
Other current liabilities		207,899
Total	$	2,860,791
Deferred Liabilities—		
Other deferred liabilities	$	12,363
Total	$	12,363
Unadjusted Credits—		
Tax liability	$	264,573
Accrued depreciation—equipment		1,957,232
Other unadjusted credits		744,291
Total	$	2,966,095
Corporate Surplus—		
Additions to property through income and surplus	$	1,646,558
Approp. surplus not specifically invested		5,248
Profit and loss		5,374,889
Total	$	7,026,695
Grand Total		$60,303,544

Exhibit B.

76th Congress) (Report No. 25
3rd Session) Senate (Part 9

Investigation of Railroads, Holding Companies, and Affiliated Companies

Additional Report
Of The
Committee on Interstate Commerce
Pursuant To
S. Res. 71
(74th Congress)

A Resolution Authorizing an Investigation of Interstate Railroads and Affiliates With Respect to Financing, Reorganizations, Mergers and Certain Other Matters

Missouri Pacific System—Intercompany Dividends and Advances—1926-1931

July 29, 1940—Ordered to be [printer]

United States
Government Printing Office
Washington: 1940

Committee on Interstate Commerce

Burton K. Wheeler, Montana,
Chairman.

Ellison D. Smith, South Carolina
Robert F. Wagner, New York
Alben W. Barkley, Kentucky
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Tom Stewart, Tennessee

Wallace H. White, Jr., Maine
Warren R. Austin, Vermont
Henrik Shipstead, Minnesota
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Clyde M. Reed, Kansas
Chan Gurney, South Dakota

Subcommittee Pursuant to Senate Resolution 71 (74th Cong.)

Burton K. Wheeler, Montana, Chairman.

Alben W. Barkley, Kentucky
Vic Donahey, Ohio
Harry S. Truman, Missouri

Wallace H. White, Jr., Maine
Henrik Shipstead, Minnesota.

Max Lowenthal, Counsel
Lucien Hilmer, Associate Counsel
Edward M. Brecher, Editorial and Research

76th Congress) Senate (Report No. 25
3rd Session) (Part 9

Investigation of Railroads, Holding Companies, and Affiliated Companies

July 29, 1940—Ordered to be printed

Mr. Wheeler (for himself and Mr. Truman), from the Committee on Interstate Commerce, submitted the following

Report
(Pursuant to S. Res. 71 of the 74th Cong.)

The subcommittee of the Committee on Interstate Commerce, pursuant to Senate Resolution 71, Seventy-Fourth Congress, submitted the following report:

Missouri Pacific System—Intercompany Dividends and Advances—1926-1931

Introduction

During the years 1923 through 1929, the Missouri Pacific Railroad Co., engaged in a far-reaching program of expansion.(1) Organized as both an operating company and a holding Company the Missouri Pacific bought controlling stock interests in one railroad after another, so that by 1929 it controlled 79 subsidiaries and subsidiaries (2). In 1930, control of the whole 80-company Missouri Pacific System was acquired by Alleghany Corporation, the Cleveland holding company formed by the Van Sweringens with the banking assistance of J. P. Morgan & Co.(3). This report traces the adverse effects of holding company control upon the dividend policies of the component companies. Some abuses were visible prior to 1930 in the relationships between the Missouri Pacific and its subsidiaries; further and more intensive abuses appeared following acquisition of control by Alleghany Corporation.

(1) See Report No. 25, Part 7 of this subcommittee, entitled "Missouri Pacific System: Reorganization Expansion and Financing 1915-1930."

(2) For a chart showing Missouri Pac. subsidiaries, see Ex. No. 5 Hearings, Part I, facing p. 216. Jointly controlled companies are included.

(3) See Report No. 25, Part 8 of this subcommittee, entitled "Alleghany Corporation: Acquisition of Mo. Pac. R. R. Co.—Devices used to secure consent of Missouri Public Service Commission."

An independent railroad, prudently managed by directors and officials who have only the interests of the railroad itself in mind, will declare only such dividends as are justified by earnings. A prudent management will plough back some of the earnings into surplus, to provide for a rainy day or for normal expansion of the business.(4) When a railroad is controlled by a holding company, however, it may be forced to act in the interests of the holding company rather than of the railroad. It may declare dividends not justified by the condition of the railroad, in order to supply income needed by the holding company. Instead of ploughing back some of its income into surplus, it may milk the surplus to pay dividends. It may juggle its accounts, lay off employees, cut pay rolls to the bone, skimp on maintenance, postpone necessary improvements of road and equipment, borrow money to pay interest, defy the accounting regulations of the Interstate Commerce Commission, and finally despoil its own security holders by declaring dividends out of capital—all in a desperate effort to continue the flow of funds from the subsidiary to the parent company.

Such were the abuses which occurred in the Missouri Pacific system between 1926 and 1931. Testimony and exhibits will be found chiefly in Part XII of this subcommittee's hearings.

Milking the New Orleans, Texas & Mexico

The Missouri Pacific acquired control of the New Orleans, Texas & Mexico (N. O. T. & M.) in 1925, through purchase of most of its common stock (5). In payment for this stock, it issued more than $13,000,000 of collateral notes, pledging the stock it purchased to secure the notes it issued. Thereafter, the Missouri Pacific was bound, under penalty of bankruptcy, to pay interest on those notes in good years and bad, whether earned or not. In theory, dividends on the N. O. T. & M. stock were payable only

(4) See an Alleghany official's discussion of "the rule of a dollar for the stockholders and a dollar for the road," below, p. 6.

(5) See another report of this subcommittee, in preparation, entitled "Missouri Pacific System: Reorganization, Expansion and Financing, 1915-1930."

when justified by that railroad's financial condition. In fact, however, the parent company, through its power of control, was in a position to sacrifice its subsidiary's financial health to its own need for income.

In every year from 1926 through 1931, the Missouri Pacific caused the N. O. T. & M. to pay $1,038,000 in dividends. Each year more than $900,000 of this sum went directly to the Missouri Pacific.(6)

The N. O. T. & M. itself never earned enough to pay these dividends. In none of the 6 years, 1926 through 1931, did the N. O. T. & M. earn more than $605,000 (exclusive of dividends from its subsidiary, the St. Louis Brownsville & Mexico). In 3 of the 6 years, the road showed a deficit after fixed charges. For the 6-year period considered as a whole its stated net income totaled a bare $90,000 (as against dividend declarations totaling $6,300,000).(7)

Even the $90,000 net income figure was a considerable overstatement. Each year the N. O. T. & M. regularly included in its operating expenses a certain sum for depreciation of its equipment. Consistently, year after year, the amount charged for depreciation was inadequate. A statement from the files of the railroad itself shows that for the period 1926 through 1930 the N. O. T. & M.'s net income was overstated (through understatement of depreciation) by more than $411,000.(8) If the railroad's depreciation had been adequately charged, it would have shown a deficit for the 6 years 1926-1931 of $321,000 after fixed charges. Yet during this period the Missouri Pacific took $5,580,000 in dividends out of the N. O. T. & M.(9)

Fifteen months after the NOT&M's final 1931 dividend payment, that railroad, along with its parent the Missouri Pacific, entered bankruptcy.(10)

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(6) Exhibit No. 1596, Hearings, Part XII, p. 5533.

(7) Idem. All figures exclude dividends from the St. L. Brownsville & Mexico.

(8) Exhibit No. 1581, ibid., p. 5495. See also below, pp. 14-15.

(9) Exhibit No. 1596, ibid., p. 5533.

(10) On March 31, 1933.

Milking the St. Louis, Brownsville & Mexico

How could the N. O. T. & M. pay out in dividends some $6,000,000 more than its own earnings between 1926 and 1931? One device it used was to milk its wholly owned subsidiary, the St. Louis, Brownsville & Mexico (hereinafter referred to as the Brownsville).

The N. O. T. & M. management, prior to acquisition by the Missouri Pacific, had been prudent in one respect at least: it had used Brownsville earnings to build up that road's surplus.(11) Under Missouri Pacific control, this prudent policy was reversed.(12) During the 6 year period 1926-31, the Brownsville earned $6,500,000 and declared in dividends to the N. O. T. & M. $8,500,000.(13) This $8,500,000 enabled the N. O. T. & M. to declare dividends, chiefly to the Missouri Pacific, some $6,000,000 in excess of its own earnings.(14) For the years 1926 through 1929, the Brownsville dividends each year amounted to more than 100 percent on its common stock. In 1929, dividends totalled 200 [precent]. In 1931 the railroad outstripped itself; dividend declarations totalled more than 800 percent.(15)

The $2,000,000 which the Brownsville declared in dividends to the N. O. T. & M. in excess of what it earned came out of the surplus which the previous management had prudently accumulated.

The details of the process by which the Missouri Pacific milked the N. O. T. & M. and the N. O. T. & M. in turn milked the Brownsville are revealed in a series of letters introduced into the record of this subcommittee. The first of these letters was written shortly after the Missouri Pa-

(11) The Brownsville profit and loss balance increased from $365,967 at the end of 1918 to $3,774,791 at the end of 1923. (Moody's Steam Railroads for 1924, p. 731).

(12) The Brownsville profit and loss balance declined from $4,007,059.42 at the close of 1926 to $821,391.76 at the close of 1931. (Exhibit No. 1598 hearings, Part XII, p. 5533).

(13) Exhibit No. 1598, Hearings, Part XII, p. 5533.

(14) Exhibit No. 1596, ibid., p. 5533.

(15) On $500,000 capital stock.

cific had assumed control. Mr. L. W. Baldwin and Mr. W. H. Williams, president and chairman, respectively, of the Missouri Pacific, had become president and chairman also of the N. O. T. & M. and of the Brownsville; seven directors of the Missouri Pacific had become directors of the N. O. T. & M. and two of these had become directors also of the Brownsville.(16)

Mr. H. R. Safford, executive vice president of the N. O. T. & M. and of the Brownsville, wrote on January 9, 1926, to Mr. Baldwin, explaining that the N. O. T. & M. had just declared and paid a quarterly dividend $87,500 in excess of its earnings for the quarter, and suggesting a way out of the difficulty. He wrote:

> * * * Meetings of the boards of directors of the Beaumont, Sour Lake & Western Railway Company (another N. O. T. & M. subsidiary) and the St. Louis, Brownsville & Mexico Railway Company should be held and dividend declared out of the earnings of those companies for the current year, or so much thereof as may be necessary to protect the dividend already declared and paid by New Orleans, Texas & Mexico Railway Co.
>
> Will you kindly advise if you desire meeting * * * (17)

Mr. Baldwin approved the plan. "Under the circumstances," he replied, "there is nothing else to do * * *."(18) The Brownsville thereupon declared a $100,000 dividend in favor of the N. O. T. & M. thus "protecting" the N. O. T. & M.'s dividend to the Missouri Pacific.(19)

During the next quarter the N. O. T. & M.'s earnings fell to $37,000.(20) A prudent management might have considered cutting dividends to match the falling earnings; the Missouri Pacific-dominated N. O. T. & M. board how-

(16) See annual reports of carriers.

(17) Exhibit No. 1568-1, Hearings Part XII, p. 5475 at p. 5476.

(18) Exhibit No. 1567, ibid., p. 5475.

(19) Exhibit No. 1568-2, ibid., p. 5476.

(20) Idem.

ever, again declared its regular dividend, $223,000 in excess of earnings for the quarter.(21) This time, however, the N. O. T. & M. could not make up its deficit through causing the Brownsville to declare a $223,000 dividend out of earnings, for the Brownsville earnings had fallen to $43,000.(22) Nor could it get help from the Beaumont, Sour Lake & Western, which showed a $47,000 deficit for the same period.(23) In this contingency the system's executives cut into the Brownsville surplus. A staff member wrote:

> The only solution I see is to declare dividends by the St. L. B. & M. (Brownsville) and the B. S. L. & W. (Sour Lake) from surplus in the past, also as large a dividend as possible by the Sugar Land and H. & B. V. (Houston & Brazos Valley) Railway Co.(24)

Another wrote to Mr. Safford, executive vice-president of the N. O. T. & M. and of the Brownsville:

> Would you kindly have this matter placed before Mr. Cole (assistant Secretary of the Brownsville), in order that he may have suitable resolution prepared and passed on at the next meeting of the Board of Directors of the St. L. B. & M. Co. (Brownsville). I will give him the amount which it will be necessary to provide from St. L. B. & M. funds.(25)

The precedents thus established were maintained. Every 3 months the N. O. T. & M. board declared its full dividend, and every 3 months the system's executives drew on the Brownsville to make up the deficit. Soon Mr. Baldwin had a form letter to send to Mr. Safford:

> It will be satisfactory to arrange meeting of board of directors of St. L. B. & M. Railway Company to de-

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(21) Idem.

(22) Idem.

(23) Idem.

(24) Idem. Italics supplied.

(25) Exhibit No. 1568-3, ibid., p. 5477.

clare dividend out of their earnings (or surplus) to protect the dividend on the N. O. T. & M. stock.(26)

When the Brownsville's earnings were sufficient, the dividend came out of earnings; when insufficient, it came out of surplus. Dividends were declared until July 1931, and in March 1933 the Brownsville, like its parent the N. O. T. & M. and its grandparent the Missouri Pacific, entered bankruptcy.

A device used to disguise the true state of affairs in 1927 is worthy of special mention. During 1925 and 1926, the N. O. T. & M. adjusted its income statements to allow for "Separately operated properties—Profit" and "Separately operated properties—Loss," presumably reflecting in this way the net incomes of various unconsolidated subsidiaries. In 1927, however, these subsidiaries showed a net income deficit of more than $600,000. If this item were included in the annual report to stockholders as had been done in previous years, the N. O. T. & M. system as a whole would have shown a net income deficit—hardly a proper basis for paying $1,038,000 in dividends. Accordingly, subsidiary losses were simply omitted from the 1927 report to stockholders, which thus showed, instead of a deficit, a $475,000 net income.

In 1928, conditions improved somewhat and the company belatedly published the figures which had been suppressed in 1927.(26a)

Alleghany Corporation Assumes Control

Alleghany Corporation secured control of the Missouri Pacific System in May 1930.(27) Alleghany's serious difficulties began shortly thereafter.

A memorandum from the files of the statistical depart-

(26) Exhibits Nos. 1568-6, 1568-8, 1568-12, 1568-17, 1568-20, 1568-22, 1568-23, 1568-28, ibid., pp. 5478-5484.

(26a) 12th and 13th Annual Reports for Stockholders, N. O. T. & M. pp. 8 and 33.

(27) See Report No. 25, Part 8, of this subcommittee, entitled "Alleghany Corporation: Acquisition of Missouri Pacific Railroad Company—Devices used to secure consent of Missouri Public Service Commission."

ment of Alleghany's bankers, J. P. Morgan & Co., dated October 24, 1930, indicates the nature of these difficulties. It shows that Alleghany's estimated income for the year would fall short of its requirements by almost $1,500,000.(28) The memorandum in the Morgan office suggested a way to make up most of this deficiency—namely, by taking it out of the Missouri Pacific.

> The deficiency of $1,472,304 from the full (Alleghany) requirements could be made up immediately by declaration of an extra $5 dividend on the Missouri Pacific Preferred * * *.(29)

The memorandum pointed out that—

> * * * the $5 extra on Missouri Pacific Preferred is not really income, but realization of capital.(30)

Nevertheless, it stated that Alleghany, by reason of its control of the railroad, could force payment.

> * * * Alleghany Corporation, due to its representation in the management of the constituent companies, is in a position to avoid any default for at least a year on its Preferred Dividend payments.(31)

In 1931, Alleghany's position became even more perilous. It had to have about $4,500,000 to meet its interest charges plus $3,800,000 for preferred dividends.(32) Its stock trading account with Paine, Webber & Co., was seriously under-margined.(33) By the end of May, Alleghany's bankers were discussing the advisability that the holding company pass its August preferred dividend,(34) and hold in cash the money thus saved "until later on in the year when the earnings of the Missouri Pacific would be

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(28) Exhibit No. 1594, Hearings, Part XII, p. 5521 at p. 5522.

(29) Idem.

(30) Idem.

(31) Idem. Italics supplied.

(32) Ibid., at p. 5521.

(33) Exhibits Nos. 744-766, Hearings, Part VII, pp. 2646-2689.

(34) Exhibits Nos. 748 and 749, ibid., p. 2680.

known".(35) Alleghany's income from other sources was declining. In short, Alleghany urgently needed income from the Missouri Pacific.

In addition, Alleghany faced the possibility of losing control over its subsidiaries, by reason of a decline in the market value of the securities it owned. A feature of its financial structure was a provision in the indentures securing its bond issues, providing that if the market value of securities owned by Alleghany and pledged to protect the bondholders fell below 150 percent of the face amount of bonds outstanding, then the right to vote the pledged securities would pass to Guaranty Trust Co. as trustee for Alleghany's bondholders. Thus a decline of the market value of securities owned by Alleghany would in effect result in a kind of receivership.(36)

The situation was especially acute with respect to the last of Alleghany's three bond issues, the so-called 5's of 1950. The proceeds of this issue had been used to purchase Missouri Pacific securities, and Missouri Pacific securities in turn were the chief collateral behind the bonds. If the Missouri Pacific passed its 1931 dividend, or if it made a poor income showing for the year, the resulting decline in the market value of Missouri Pacific securities might well depress the collateral of the 5's of 1950 below the 150-percent mark, and thus force Alleghany to relinquish control to the Guaranty Trust Co.(37) Moreover, as a result of further provisions of the bond indentures, Alleghany's income would be impounded by the trustee, and payment of dividends on Alleghany stocks stopped.(38) Alleghany, in short, had the most urgent need for causing the Missouri Pacific to show high earnings and to pay dividends in 1931.

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(35) Exhibit No. 750, ibid., p. 2681. See also this subcommittee's general report on the Van Sweringens, in preparation.

(36) The Alleghany bond indentures and supplements are found in the record as Exhibits Nos. 43 through 48, inclusive, Hearings, Part I, pp. 265-357. See also this subcommittee's general report on the Van Sweringens, in preparation.

(37) The collateral actually fell below the 150 percent mark in August 1931; Guaranty Trust Co. took over voting rights of the securities, and impounded income, in September. (Exhibit No. 57, Hearings, Part I, p. 366).

(38) Idem.

In April 1930, when seeking the Missouri Public Service Commission's consent to Alleghany's acquisition of the Missouri Pacific, John P. Murphy, a Van Sweringen official, had assured the Commission:

> * * * The policy of the Van Sweringens in connection with all of their different corporations has not been to * * * take out more than they left in. * * * The rule of a dollar for the stockholders and a dollar for the road has been more liberally construed by them, for keeping money in the business. * * * They have declared dividends as they should be declared, but never to the extent of robbing the company of the portion of the earnings they should have for further development.(39)

Instead of following "the rule of a dollar for the stockholders and a dollar for the road" which Alleghany told the Missouri commission it obeyed, the Missouri Pacific under Alleghany control followed a very different rule; $2. for the stockholders and a deficit for the company. In 1931, the Missouri Pacific, the N. O. T. & M., the Brownsville, and the Texas & Pacific (another Missouri Pacific subsidiary) were all caused to declare dividends far in excess of earnings.

Devices Used to Inflate Income Statements for 1931

(a) Drastic curtailment of expenditures—The Missouri Pacific's net income for 1930, exclusive of dividends received, was less than the dividends it declared.(40) If the Missouri Pacific were to declare dividends in 1931, it would no doubt have to rely again, at least in part, on dividends received from its subsidiaries.

Mr. Baldwin, president of the Missouri Pacific and the N. O. T. & M. ordered operating officials to take drastic steps to insure payment of dividends from the N. O. T. & M. to the Missouri Pacific, and thus to swell the latter's 1931

(39) Exhibit No. 1372, Hearings, Part XI, p. 4795 at p. 4799.

(40) Exhibit No. 1569, Hearings, Part XII, p. 5485.

income statement. On April 16, 1931, reinforcing previous orders, he wrote to the executive vice president of the N. O. T. & M.:

> Mr. Safford: I want to impress upon you again the fact that although it may necessitate a much more drastic curtailment of expense than you have ever had or anticipated, the N. O. T. & M. must earn and pay its dividend this year and have $100,000 left in addition.
>
> In this connection I want further to impress you with the necessity of curtailing expenditures chargeable to Additions and Betterments and only submit or authorize such items that cannot possibly be deferred.(41)

Mr. Safford knew what was expected of him. In reply he wrote to Mr. Baldwin:

> Our Maintenance of Way and Structures expenses are now programmed at $1,801,507, a reduction of $591,622, or approximately 25% under last year. We have reduced our operating expenses in connection with improvements from $382,600, as originally budgeted, to $55,100; this involves deferring all rail and ballast work. We plan on using 150,000 cross ties as compared with 212,000 last year.
>
> Our present program for Maintenance of Equipment means * * * a reduction of $621,756 or 22.8% under last year. This will be the lowest expenditure for M(aintenance) of E(quipment) since 1924 and provides running repair money only for locomotives and cars, except that we will be able to turn out about 15 Class 1, 2 and 3 repairs as compared with 49 last year. At the end of 1931, there will be about 30 engines which will have run out their assigned mileage. * * * This estimate gives effect to the reduction in passenger service on the Kingsville division in January, amounting to approximately 242,000 train miles per annum. * * * (42)

(41) Exhibit No. 1570, Ibid., p. 5485.

(42) Ibid., at p. 5486.

Mr. Safford's letter clearly indicates the effects upon the railroad of the demand for dividends in the face of declining revenues. Maintenance of physical property is skimped, improvements are postponed, equipment is allowed to deteriorate, necessary repairs are neglected, and service to the public is curtailed, all in a desperate effort toward "the realization of the goal indicated" by the president of the parent company. Mr. Safford's letter concludes with a plaintive revelation of the plight of an operating railroad official forced to sacrifice the maintenance of his road to the dividend requirements of the parent company:

> The net result (even after the drastic curtailment listed above) falls far short of what you want to accomplish and I realize this is disappointing and am still hopeful we can improve it and we shall make every possible effort to do so. Our present program for Maintenance of W(ay) and M(aintenance) of E(quipment) is materially under last year, and we have felt that we have gone as deeply into these expenditures as we could without impairing the standard of service, but we will continue to check this further to see what more can be done, in recognition of your request.(43)

The curtailment of expenditures which Mr. Baldwin demanded of the N. O. T. & M. was also instituted in another major Missouri Pacific subsidiary—the Texas & Pacific. Additions and betterments on this road declined from a high of $13,500,000 net in 1928 to a low of $1,870,000 net in 1931.(44) Maintenance of [raod] and equipment was curtailed from $16,200,000 in 1928 to $8,600,000 in 1931.(45) Dividends, however, were not curtailed; the Texas & Pacific paid more into the coffers of its parent in 1931 than in 1928.(46)

(b) Laying-off of workers and curtailment of pay rolls.—Mr. Baldwin's demand that the N. O. T. & M. "must earn

(43) Idem. See also Hearings, Part XII, p. 5284.

(44) Exhibit No. 1590, ibid., p. 5520.

(45) Exhibit No. 1591, ibid., p. 5520.

(46) Exhibit No. 1569, ibid., p. 5485.

and pay its dividend this year (1931)"(47) seriously and adversely affected the employees of this road. Workers were laid off and pay rolls were drastically reduced "to reach the goal of $1,120,000 net set by Mr. Baldwin."(48)

The Texas & Pacific, another Missouri Pacific subsidiary, employed 13,463 men in 1929. This number declined to 10,753 in 1930, and to 8,369 in 1931—a total decrease of 5,094 jobs.(49) Salaries and wages declined from $19,700,000 in 1929 to $16,200,000 in 1930, and declined further to $12,400,000 in 1931—a 2-year pay roll cut of $10,800,000.(50) Yet 1931 dividends declined not at all from the 1928 level, and remained more than double the 1925-27 average.(51)

Among the devices used to reduce employment during 1930 was the reduction of switching service in Texas & Pacific yards, a reduction accomplished by causing the road crews to perform yard switching as well as road duties. Texas & Pacific employees discharged as a result of this practice protested and filed claims with the National Railroad Adjustment Board. Following hearings before Floyd K. Garrison as referee, the Board found that the Texas & Pacific had violated the yard agreement which it had signed with its employees, and that "the carrier first reduced and then eliminated yard service * * * over the protest of the employees, and without any attempt to arrive at an understanding."(52) In an award dated Oct. 29, 1936, the Board ordered payment of compensation to the yardmen thus deprived of work.(53)

The president of the Missouri Pacific and N. O. T. & M. evplained how such employment and pay-roll cuts were made:

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(47) Exhibit No. 1570, ibid., p. 5485.

(48) Exhibit No. 1572, ibid., p. 5486 at 5487.

(49) Exhibit No. 1592, ibid., p. 5520.

(50) Idem.

(51) Exhibit No. 1593, ibid., p. 5520.

(52) Award No. 1509. Docket No. 825, [Natioanal] RR Adjustment Bd. First Div.

(53) Idem.

Mr. Baldwin. * * * Where one superintendent had one division, we probably put two or three divisions on him. And where one trainmaster had so many miles, and one roadmaster had so many miles, and one section foreman had so many miles, the territory they had covered theretofore was extended.

Mr. Kaplan (associate counsel to the Senate subcommittee). A general labor saving problem.

Mr. Baldwin. Yes, sir. There is not much saving left on a railroad nowadays except labor saving.(54)

There was of course at least one other possible retrenchment—suspension of dividends.

(c) Juggling intercompany books.—Railroads within the Missouri Pacific system lent money to one another by means of cash advances on open account. The Missouri Pacific Railroad Co. itself, for example, made cash advances to its subsidiaries, the N. O. T. & M., the International-Great Northern, and various others. The International-Great Northern in turn made cash advances to the N. O. T. & M. and to N. O. T. & M. subsidiaries.(55) On these inter-company loans, the borrower showed on its books that it was obligated to pay interest, and the lender showed on its books that it was entitled to receive interest. The N. O. T. & M. accrued interest on its debt to the International-Great Northern but did not pay it; the latter, however, set up interest on this account, not merely as money due it, but as income,(56) thus swelling its apparent earnings.

In 1931 an N. O. T. & M. official evolved a still more ingenious plan for increasing the apparent net income of the N. O. T. & M. He proposed to cease accruing interest on this debt on the books of the N. O. T. & M. Thus the funds properly chargeable as interest payable by the N. O. T. & M. were not deducted from the N. O. T. & M.'s gross income; the amount which should have been deducted for

(54) Hearings, Part XII, p. 5102.

(55) Exhibit No. 1614, ibid., pp. 5546-5548.

(56) Exhibit No. 1572, ibid., p. 5486 at p. 5487.

interest payable was instead made available for declaration of an N. O. T. & M. dividend.(57)

Ceasing to account for the interest due it reduced the net income of the International-Great Northern by the same amount as the income of the N. O. T. & M. was increased. But the International-Great Northern was not going to pay dividends anyway,(58) and hence its apparent net income was not a source of concern to its parent and grandparent companies.

Since the International-Great Northern stock was wholly owned by the N. O. T. & M. the transaction was in effect taking money out of one pocket and putting it into another; or, more accurately (for no cash was involved), taking a bookkeeping credit out of one book and putting it into another. The net effect of this jugglery was to turn an interest payment due from the N. O. T. & M. to the International-Great Northern into an item on the basis of which the N. O. T. & M. could declare a dividend to the Missouri Pacific.

Mr. Safford pointed out to President Baldwin an obstacle to the jugglery:

> I appreciate that this action (accruing of interest) was authorized by the Board of Directors, and we probably cannot therefore change or discontinue it. * * *(59)

But Mr. Baldwin was not deterred. He replied:

> In view of present conditions, it will be satisfactory to discontinue accruing interest * * *(60)

(d) The extraordinary Brownsville dividend — Even after cutting [mainentance], employment, and pay rolls to the bone, and juggling the books, the N. O. T. & M. would

(57) Idem.

(58) Said F. P. Johnson, chief accounting officer of the Missouri Pacific System: "I don't think the I.-G. N. ever paid dividends while I have known anything about it." (Hearings, Part XII, p. 5237)

(59) Exhibit No. 1573, Hearings, Part XII, p. 5487.

(60) Exhibit No. 1475, ibid., p. 5437.

still show a debit profit-and-loss balance for the year 1931. It began the year with a profit-and-loss balance of only $700,000.(61) It operated at a loss of $606,000.(62) In addition, it had to charge off $875,000 to correct its former inadequate depreciation accruals.(63) Thus at the end of 1931, the N. O. T. & M. would show a debit profit and loss balance (excluding dividends received) of $772,000 or more. In spite of this, Mr. Baldwin, as noted above, was demanding that the N. O. T. & M. pay its usual $1,038,000 dividend for the year.

The problem was solved as it had been solved in previous years—by milking the Brownsville. But this time the milking would have to be thorough. From 1926 through 1930, the Brownsville had paid an average of $900,000 a year to the N. O. T. & M.(64) A similar payment in 1931 would barely fill the hole in the N. O. T. & M.'s profit-and-loss balance, without enabling it to pay the dividends demanded by the parent company.

The solution found was to cause the Brownsville to declare an extraordinary dividend of $3,500,000 (65)—a dividend seven times the par value of the stock upon which it was declared.(66) Other Brownsville dividends to the N. O. T. & M. brought the total for the year to $4,155,000,(67) enough to fill up the N. O. T. & M.'s profit-and-

(61) Exhibit No. 1596, ibid., p. 5533.

(62) Idem. While the exact amount of the loss could not, of course, be known until the end of the year, the trend was clearly visible much earlier. (Cf. Exhibit No. 1487, Hearings, Part XII, p. 5392, dated Oct. 25, 1930.)

(63) Exhibit No. 1580, ibid., p. 5494.

(64) Exhibit No. 1598, ibid., p. 5533.

(65) Exhibits No. 1599-B through 1599-G, and 1600 ibid., pp. 5534-5536.

(66) The Brownsville was peculiarly capitalized in that its debt was 30 times as large as its comparatively small stock issue, and hence the ratio of dividends to stock is especially striking. Other comparisons not dependent upon the peculiar capitalization, however, are equally striking. For example, the Brownsville's gross revenues from all sources for the year 1931 totalled $6,119,506. (Poor's Steam RR's 1932 p. 651) Thus the $4,155,000 of 1931 dividends amounted to 2/3rds of the total revenues. Dividends declared amounted to more than three times the Brownsville's net railway operating income ($1,238,118), and more than 10 times its net income after fixed charges ($397,879). (Idem.)

(67) Exhibit No. 1598, Hearings, Part XII, p. 5533.

loss deficit and to enable the latter to declare a $1,038,000 dividend in favor chiefly of the Missouri Pacific.

Mr. Andrews, general solicitor for the Brownsville, thought that the executive committee of the railroad, even without action by the board of directors, had the power to declare the $3,500,000 dividend.(68) A quorum of the Brownsville executive committee consisted of Mr. Baldwin, President of the Missouri Pacific, Mr. O. P. Van Sweringen, president of Alleghany Corporation.(69) Mr. Andrews, however, "in view of the amount involved," thought it "highly desirable" that the whole board of directors declare the dividend instead of Mr. Baldwin and Mr. Van Sweringen.(70) "I quite appreciate the desirability of board action in this instance," Mr. Van Sweringen wrote.(71) The Brownsville board met in due course and declared the dividend.(72) As a result, the Brownsville profit and loss balance was reduced from $5,100,000 at the end of 1930 to $822,000 at the end of 1931;(73) in May of 1933 the railroad was bankrupt.

(e) Falsifying the Missouri Pacific's books—As a result of receiving $3,022,000 in dividends from its subsidiaries the Texas & Pacific and the N. O. T. & M., the Missouri Pacific was able, in 1931, to show a net income of $1,395,000.(74) Even this showing, however, was false, and based upon a falsification of the Missouri Pacific's own books.(75)

In 1930, Alleghany Corporation had caused the Missouri Pacific to buy certain terminal properties in Missouri from another Alleghany subsidiary, Terminal Shares, Inc. The

(68) Exhibit No. 1599-C, ibid., p. 5534.

(69) Exhibit No. 1599-D, ibid., p. 5534.

(70) Idem.

(71) Exhibit No. 1599-G, ibid., p. 5535.

(72) Exhibit No. 1600, ibid., 5535 at p. 5536.

(73) Exhibit No. 1598, ibid., p. 5533.

(74) Exhibit No. 1569, ibid., p. 5485.

(75) See Report No. 25, Part 3, of this subcommittee, entitled "Fallibility of Auditors' Certificates: Inadequacy of Price, Waterhouse & Co.'s Certificate to Missouri Pacific stockholders."

sale was dictated by Alleghany, which controlled both buyer and seller.(76) The bankruptcy court later found this Terminal Shares transaction to be "improvident, unfair, and overreaching," as well as "grossly unfair and inequitable" and to involve Clayton Act violations and "ultra vires conduct" on the part of the Missouri Pacific.(77) The court further found that the purchase price which the Missouri Pacific was forced to pay "was exorbitant, and had the effect to saddle upon the debtor (Missouri Pacific) an immense loss already sustained by Alleghany Corporation".(78)

The aggregate purchase price for these properties was about $20,000,000. The Missouri Pacific did not pay the full sum, but instead agreed to pay $400,000 every three months, partly as interest and partly for reduction of principal.

Interest paid by the Missouri Pacific under the Terminal Shares contract in 1931 amounted to $858,000.(79) But the Missouri Pacific did not set this $858,000 up on its books as an interest payment or as a payment of any kind. Instead, it entered both the interest and the payment on principal as a current asset under "special deposits".(80)

The Missouri Pacific's actual net income for 1931 cannot have been more (even including dividend income) than $537,000. By falsifying the books to conceal the $858,000 interest payment, this $537,000 net income was inflated to $1,395,000; in the same year $2,659,000 dividends were declared.(81)

Alleghany Corporation benefited directly from the falsi-

(76) Other reports of this subcommittee, in preparation, treat the Terminal Shares transaction in detail. See also Hearings, Part II, passim; Part III, passim; and Part XII, pp. 5141 et seq. A summary by Interstate Commerce Commissioner Joseph B. Eastman will be found at Hearings, Part II, pp. 541-545.

(77) Exhibit No. 119, Hearings, Part II, p. 683, at pp. 684-685.

(78) Ibid.

(79) Exhibit No. 219, ibid., p. 1078.

(80) Hearings, Part II, pp. 574-578.

(81) Idem.

fication of the Missouri Pacific's books, both by reason of the dividends which it was thus enabled to receive from the Missouri Pacific, and by reason of the effect of the inflated earnings statement on the market value of Missouri Pacific securities which it owned. But Alleghany did not stop there. It took an extra benefit by maintaining an inconsistency in accounting between the Missouri Pacific and Terminal Shares, Inc.

Although Missouri Pacific was treating its $858,000 interest payment to Terminal Shares, Inc., as a current asset under "special deposits", both Terminal Shares, Inc., and Alleghany Corporation, the recipients, were properly treating this same $858,000 payment as income.(82) Thus Alleghany got the benefit both ways—through Missouri Pacific's false accounting and through Terminal Shares, Inc.'s correct accounting.

The amount involved was not limited to the $858,000 falsification in 1931. During the years 1930-34, the Missouri Pacific failed to accrue some $3,375,000 of interest payments to Terminal Shares, Inc. inflating its net-income showing and corporate surplus by that amount.(83)

Summary of System Earnings and Dividend Declarations for 1931.

1. In the year 1931, the Brownsville earned $398,000 and declared $4,155,000 in dividends to the N. O. T. & M.

2. The N. O. T. & M. showed an operating deficit (before receipt of the Brownsville dividends) of $606,000. It showed a profit and loss deficit (exclusive of the Brownsville dividends) of at least $772,000. Nevertheless, it declared a $1,038,000 dividend, made possible by the $4,155,000 dividends declared in its favor by the Brownsville.(83a)

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(82) Idem.

(83) Exhibit No. 219, ibid., p. 1078.

(83a) The $1,038,000 N. O. T. & M. 1931 dividend was declared in spite of the fact that the consolidated income statement of that railroad and its 14 subsidiaries showed a $1,122,000 net income deficit. (N. O. T. & M. Annual Report for 1932, p. 3.)

3. The Texas & Pacific net income was $2,041,000. It declared dividends of $2,639,000—$598,000 in excess of income.

4. The Missouri Pacific had a deficit (excluding dividend income and properly accounting for Terminal Shares interest payments) of $2,486,000. Nevertheless, it declared dividends totaling $2,659,000. It was enabled to do this chiefly by the declaration in its favor of dividends totaling $3,023,000 from its subsidiaries, the N. O. T. & M. and Texas & Pacific, and by concealing an $858,000 interest payment as a "special deposit."

Borrowing Money to Pay Dividends: The Brownsville.

Every dividend payment involves at least two problems. The first is a legal problem. There must be a profit and loss balance from which the law permits the declaration of a dividend. The devices used to solve this legal problem have been described above. The second is a financial problem. There must be cash with which to pay the dividend. This problem the devices described above did not solve.

Mr. Baldwin and Mr. Van Sweringen alone, as a quorum of the Brownsville executive committee, could, in the opinion of counsel, declare a dividend of $3,500,000 in favor of the N. O. T. & M. probably without violation of law.(84) But they could not cause the Brownsville to pay such a dividend, because the Brownsville didn't have the money.(85) The Brownsville's dividend declaration gave the N. O. T. & M. a profit and loss balance on paper, but it did not give the N. O. T. & M. any cash to pay a dividend. Some of the Brownsville dividend was never paid, and some was "paid" with money borrowed from the N. O. T. & M.

In 1931, the Brownsville did in fact "pay" the N. O. T. & M. $1,000,000 of the special $3,500,000 dividend de-

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(84) See supra, p. 10; Exhibit No. 1599-C, Hearings, Part XII, p. 5534.

(85) Exhibit No. 1602, Hearings, Part XII, p. 5537 at p. 5538.

clared.(86) But even this $1,000,000 "payment" was more than offset by the $1,500,000 advanced to the Brownsville by the N. O. T. & M.(87) The Brownsville did not even give the N. O. T. & M. a voucher for the remaining $2,500,000; it was simply carried over to the next year.(88) An additional $655,000 was transferred only on paper; a voucher was issued but not paid in cash.(89) In short, while the Brownsville purported to declare $4,155,000 in dividends, it was actually borrowing from the N. O. T. & M. more than it paid out to the N. O. T. & M.

Borrowing Money to Pay Dividends: The N. O. T. & M.

The N. O. T. & M. solved its legal problem by entering, as income, dividends declared by the Brownsville but not paid. It solved its financial problem by borrowing money from the Missouri Pacific to pay dividends to the Missouri Pacific.

A memorandum from the files of the Guaranty Co. of New York, the investment subsidiary of the Guaranty Trust Co., prepared for Mr. Harold Stanley, then of J. P. Morgan & Co., concisely describes the process.

> While full dividends were paid (by the N. O. T. & M.) in 1931 the cash available * * * was derived from loans from the Missouri Pacific, so that the earnings in this case were no more than a book entry.(90)

A memorandum from the files of the N. O. T. & M. enumerates the advances in detail: (91)

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(86) Hearings, Part XII, pp. 5294-5295.

(87) Ibid., p. 5301.

(88) Exhibit No. 1601, ibid., pp. 5536-5537; discussed, ibid., at pp. 5294-5295.

(89) Exhibits Nos. 1605 and 1607, ibid., pp. 5539-5540; discussed, ibid., at pp. 5298-5300.

(90) Exhibit No. 1595, ibid., p. 5522 at p. 5530.

(91) Exhibit No. 1613, ibid., p. 5546 at pp. 5547-5548.

Analysis of cash advances between system lines—Gulf Coast Lines (N. O. T. & M.): Cash Advances from Missouri Pacific R. R.

* * * * * * *

Feb. 25, 1931. For payment of dividend on Capital Stock due March 1, 1931.....$ 75,000.

* * * * * * *

May 27, 1931: For payment of dividend on Capital Stock due June 1, 1931..... 200,000

* * * * * * *

Aug. 29, 1931: For payment of dividend on Capital Stock due Sept. 1, 1931..... 250,000

* * * * * * *

Nov. 27, 1931: For payment of dividend on Capital Stock and principal of Equipment Trust Notes, Series B, due December 1, 1931 300,000

During the years 1929-1932, the Missouri Pacific advanced more than $10,000,000 to the N. O. T. & M. of which more than $2,000,000 was stated to be for "payment" of dividends.(92)

The accounting regulations of the Interstate Commerce Commission required that any borrowings for the purpose of paying dividends should be revealed in the railroad's annual report. The Commission's instructions on this point were specific:

> * * * If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividend, or for the purpose of replenishing the treasury of respondent after paying dividends, give particulars in a footnote. If none has been incurred for such purpose state that fact.(93)

In spite of the fact that memoranda prepared by its auditors showed that the N. O. T. & M. had borrowed more

(92) Idem.

(93) Treated at Hearings, Part XII, p. 5274.

than $2,000,000 from the Missouri Pacific between 1929 and 1931 "for payment of dividends on Capital Stock", the N. O. T. & M. informed the Interstate Commerce Commission:

> No obligation has been incurred for the purpose of [procurring] funds for payment of dividends or for replenishing treasury of respondent after payment of dividends.(94)

In testimony before this subcommittee, Mr. William Wyer, Secretary-treasurer of the Missouri Pacific and of the N. O. T. & M. argued that, in spite of the evidence introduced into the record, the Missouri Pacific system lines did not borrow money to pay dividends. "You cannot earmark dollars"(95) he said, and introduced a prepared statement (96) defending that thesis. Mr. Wyer's statement and testimony are treated in an appendix, below.(97)

Borrowing Money to Pay Dividends: The Missouri Pacific.

The N. O. T. & M. could borrow from the Missouri Pacific to pay dividends to the Missouri Pacific; but the Missouri Pacific's cash position was in nowise improved by such accounting practices. True the N. O. T. & M. dividend gave the Missouri Pacific a paper profit and loss balance out of which to declare a dividend, but, like the extraordinary Brownsville dividend to the N. O. T. & M. it provided no cash. And so the Missouri Pacific, like the N. O. T. & M. and the Brownsville, borrowed money.

In 1931, the Missouri Pacific borrowed $80,000,000.(98) It used $69,500,000 for refunding of debt and for sinking fund requirements (99) leaving more than $10,000,000 ex-

(94) N. O. T. & M. Annual Reports to I. C. C. See also Exhibit No. 1610, Hearings, Part XII, p. 5542 at p. 5543.

(95) Hearings, Part XI, p. 4734.

(96) Exhibit No. 1583, Hearings, Part XII, pp. 5498-5500.

(97) See pp. 17-20, infra.

(98) Hearings Part XII, p. 5316. About $56,610,000 was from the sale of bonds and $23,400,000 short-term notes to J. P. Morgan & Co. (Idem.)

(99) Ibid., pp. 5316-5317.

cess of borrowing over refunding. It spent approximately $7,250,000 (gross) for additions and betterments.(1) The rest of the money borrowed, some $2,750,000, went to increase the Missouri Pacific's cash available for the payment of dividends. Dividends actually declared and paid (of which Alleghany Corporation received about 33 percent) totalled $2,659,000.(2)

Summary of Missouri Pacific System Borrowings to Pay Dividends During 1931

1. The Brownsville borrowed $1,500,000 from the N. O. T. & M. and in turn "paid" $1,000,000 in dividends to the N. O. T. & M. (out of $4,155,000 declared).

2. The N. O. T. & M. borrowed about $1,000,000 from the Missouri Pacific—"for the payment of dividends on Capital Stock", as the N. O. T. & M. auditor declared—and in turn paid almost $1,000,000 in dividends to the Missouri Pacific.

3. The Missouri Pacific borrowed $80,000,000, some $2,750,000 of which was added to its free cash available for the payment of dividends. The Missouri Pacific paid out some $2,659,000 in dividends (about 33 percent of which went to Alleghany Corporation).(3)

Payment of New Orleans, Texas, & Mexico Dividends Out of Capital in 1930

The intricate accounting devices evolved by railroad and holding company officials in an attempt to legalize dividend payments unjustified by earnings resulted, both in 1930 and 1931, in the payment of N. O. T. & M. dividends out of capital, a procedure disguised in 1930 behind faulty bookkeeping and in 1931 behind an out-and-out violation of Interstate Commerce Commission accounting regulations.

When holding company interests took control of the Mis-

(1) Idem.

(2) Exhibit No. 1569, ibid., p. 5485.

(3) Hearings, Part XII, p. 5372.

souri Pacific in May 1930, they soon discovered that the railroads in the system had been consistently overstating their income by underdepreciation of equipment.(4) This underdepreciation for the system as a whole amounted to more than $30,000,000; of which $26,000,000 occurred on the Missouri Pacific itself, and $875,000 on the N. O. T. & M.(5)

Mr. William Wyer, Secretary-treasurer of these roads, testified that to adjust this depreciation bookkeeping was "one of the first things he (Mr. O. P. Van Sweringen) wanted done".(6) The president of the Missouri Pacific testified that the railroad planned to adjust the cumulative error at least as early as October 1930.(7) Nevertheless, the error was not promptly adjusted. Instead, a dividend was declared; and the Interstate Commerce Commission's consent to charge off past depreciations was not asked until January 10, 1931, after the dividend had already been declared.(8)

If the N. O. T. & M. had made adequate depreciation provisions from the beginning, or had made adjustments when the Van Sweringen interests first found the true state of affairs, the N. O. T. & M. would have shown a $165,000 debit profit and loss balance after payment of 1930 dividends.(9) The $165,000 profit and loss deficit which adequate accounting would have revealed represented a dissipation of capital through dividends.

Payment of New Orleans, Texas & Mexico Dividends Out of Capital in 1931

The Interstate Commerce Commission's uniform accounting rules specifically provide that:

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(4) Ibid., p. 5289. The N. O. T. & M. was not unique; other railroads followed similar depreciation accounting.

(5) Exhibit No. 1580, ibid., p. 5494.

(6) Hearings, Part XII, p. 5289.

(7) Ibid., p. 5230.

(8) Exhibit No. 1576, ibid., pp. 5488-5489.

(9) Profit and loss balance claimed by N. O. T. & M. at close of 1930 $709,616.04 (Exhibit No. 1596, Hearings, Part XII, p. 5533). Deduction necessary to adjust depreciation account, $874,965.82 (Exhibit No. 1580, ibid., p. 5494). Resulting debit profit and loss balance $165,349.78.

> Dividends declared shall not be credited (as income on the books of the company receiving them) prior to actual collection unless their payment is reasonably assured by past experience, guaranty, anticipated provision, or otherwise.(10)

Payment of the $4,155,000 dividends declared by the Brownsville in 1931 was not "reasonably assured." Only $1,000,000 was paid in 1931, and even this sum was more than offset by the $1,500,000 lent the Brownsville by the N. O. T. & M.(11) Nevertheless, the N. O. T. & M. entered the full $4,155,000 of Brownsville dividends as "income."(12)

The Bureau of Accounts of the Interstate Commerce Commission, after it learned the facts, informed the railroad:

> When this dividend was declared, your company was aware that the St. Louis, Brownsville & Mexico Railway was without funds to pay it and even on the basis of past experience the earnings of the company, had business continued good, would not have been adequate to make the payment until some future date. The recording of the dividend in account "513" (dividend income) when declared was clearly in violation of the Commission's accounting rule.(13) * * *

The unpaid portion of the $3,500,000 extraordinary Brownsville dividend at the end of 1931 was $2,500,000. If the N. O. T. & M. had kept its books properly in this respect, it would have shown a debit profit and loss balance of $175,000.(14) In short, as Mr. William Wyer, Secretary-treasurer of the Missouri Pacific and of the N. O. T. & M.,

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(10) Exhibit No. 1602, Hearings, Part XII, p. 5537 at p. 5538.

(11) See supra p. 12.

(12) Exhibit No. 1602, Hearings, Part XII, p. 5537 at p. 5538.

(13) Idem.

(14) The N. O. T. & M.'s unappropriated profit and loss balance at the close of 1931 was $2,325,776.16. This was overstated by $2,500,000 improperly entered as "dividend income." Correct accounting would have shown, therefore, a $174,223.84 debit profit and loss balance. (Hearings, Part XII, p. 5296.)

conceded in testimony before this subcommittee, the N. O. T. & M. had not only violated the I. C. C.'s uniform accounting rule but had actually declared dividends out of capital.

> Mr. Brown (executive assistant to the subcommittee). If we take off that $2,500,000, part of that dividend was declared out of capital, on that showing alone?
>
> Mr. Wyer. Yes. On that basis there would be $175,000, approximately that.
>
> Mr. Brown. So it was more than a violation of the Commission's rules, was it not, that was involved here? There was an actual declaration of dividend to Missouri Pacific out of capital?
>
> Mr. Wyer. Apparently there was. * * * (15)

But Mr. Wyer went on to assure the subcommittee that the directors of the N. O. T. & M. (including Mr. O. P. Van Sweringen and six of his Cleveland associates) did not know that they were declaring dividends out of capital.

Appendix: Examination of Statement and Testimony Denying That Money Was Borrowed to Pay Dividends (1)

In testimony before this subcommittee,(2) and in a prepared statement introduced at his request into the record of this subcommittee,(3) Mr. William Wyer, Missouri Pacific secretary-treasurer, protested [sternuously] against any implication that railroads in the Missouri Pacific system had borrowed money for the purpose of paying dividends.

The statement he submitted draws a sharp distinction between financial transactions accounted for in a railroad's balance sheet, and operations transactions, accounted for

(15) Hearings, Part XII, p. 5296.

(1) See above p. 13.

(2) Hearings, Part XII, pp. 5272 et seq.

(3) Exhibit No. 1583, ibid., pp. 5498-5460.

in its income account. Money can only be borrowed, Mr. Wyer asserts, for the purpose of acquiring assets—a financial transaction. Sometimes, instead of borrowing money from a bank or through sale of securities in order to acquire assets, the railroad in effect borrows the money from itself—that is, from a hypothetical operations fund. Later, when it wishes to pay a dividend and has not sufficient cash on hand, it borrows money from outside and pays the dividends; but the purpose of the borrowing is not to pay the dividend; the purpose is to pay for the assets previously acquired.(4)

Mr. Wyer was shown the statement prepared by the statistical department of J. P. Morgan & Co. which asserted that—

> While full dividends were paid (by the N. O. T. & M.) in 1931 the cash available * * * was derived from loans from the Missouri Pacific, so that the earnings in this case were no more than a book entry.(5)

Mr. Wyer stated that he did not agree with this analysis. "I do not think they knew what the facts were," he said.(6)

Mr. Wyer was shown a memorandum prepared in the offices of the auditor of the N. O. T. & M. and subsidiaries, showing a whole series of advances from the Missouri Pacific of the N. O. T. & M. specifically described as being "for payment of dividend on capital stock".(7) In many cases the amount and date of the advance from the Missouri Pacific to the N. O. T. & M. matched the amount and date of the dividends from the N. O. T. & M. to the Missouri Pacific.(8) Mr. Wyer's comment was that the audi-

(4) "If we keep clearly in mind the distinction between these two kinds of changes in the balance sheet, namely the changes arising out of financial transaction and the changes arising out of operation of the property, I think it will help to clear the confusion which has arisen in connection with the questions of increases of indebtedness and the declaration of dividends." (Ibid. at p. 5498)

(5) Exhibit No. 1595, ibid., p. 5522. See above p. 12.

(6) Hearings, Part XII, p. 5286.

(7) Exhibit No. 1614, ibid., pp. 5546-5548.

(8) Exhibits Nos. 1615-A, 1615-B, 1615-C and 1615-D, ibid., pp. 5549-5551.

tor "did not know, or if he knew he did not stop to think, what the basic principles underlying these transactions were,(9) and that he "never tried to find out what was in the minds of the board of directors when these advances were made."(10)

What was in the minds of the board of directors in an analogous situation is shown in the minutes of the Missouri Pacific board for Sept. 9, 1930:

> The chairman stated that the cash payments which the Company was required to meet up to October 1, 1930, for interest on funded debt, for dividends and for an advance * * * aggregated $4,300,000, and that funds on hand * * * were $2,492,000.
>
> Whereupon, on motion duly seconded, it was unanimously
>
> Resolved that the Chairman of the Board of Directors, or the Treasurer, be, and they hereby are, authorized to borrow $1,800,000 * * * (11)

Mr. Wyer was shown a voucher accounting for the payment of a $296,000 dividend from the Texas & Pacific to the Missouri Pacific, $290,000 of which was stated on the voucher itself to come "from proceeds of $1,700,000 loan to the Texas & Pacific Railway Co."(12) Mr. Wyer, however, denied that the funds to pay the dividend were taken from the funds borrowed. He stated: "The voucher is technically wrong."(13)

The two-fund theory is rendered plausible by the circumstance that borrowing money does not give a railroad a legal basis for declaring a dividend. To get that legal basis, railroads in the Missouri Pacific System adopted such bookkeeping devices as underaccruing depreciation, entering as income items which are not properly income,

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(9) Hearings, Part XII, p. 5309.

(10) Ibid., p. 5308.

(11) Exhibit No. 1491, ibid., p. 5407 at p. 5408.

(12) Exhibit No. 1585, ibid., p. 5501.

(13) Hearings, Part XII, p. 5277.

ceasing to accrue interest on borrowed funds, etc.(14) To get the cash, they borrowed.

The facts of a typical case may be summarized simply. A railroad declares a dividend. It has no cash to pay the dividend. It borrows enough cash to pay the dividend. It pays the dividend. Such a case is herein described as "borrowing money to pay dividends." The minutes of the Missouri Pacific board, the voucher of the Texas & Pacific, the memorandum prepared by the auditor of the Gulf Coast Lines and the statistical department of J. P. Morgan & Co., describe it similarly. This realistic description contrasts with Mr. Wyer's belief that the real purpose of the borrowing involved an asset acquired and paid for "five or ten or twenty years"(15) before.

The two-fund analysis confuses the purpose for which funds are borrowed with the legal basis for borrowing funds. When a railroad acquires an asset, it may either borrow money to pay for it or use funds already in the treasury. If thereafter—perhaps many years thereafter—it borrows money, the acquisition of the asset paid for long ago can certainly not be considered as the purpose of borrowing. At best it supplies the legal basis of the borrowing.

* * * * * * *

The Interstate Commerce Commission, in instructions to railroads for reporting under account 300-D, declares:

> If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividends, or for the purpose of replenishing the treasury of respondent after paying dividends, give particulars in a footnote. If none has been incurred for such purpose state that fact.(16)

The careful wording of these instructions ("for the purpose of procuring funds for the payment of any dividend" rather than "for the purpose of paying dividend") indi-

(14) See above pp. 6-11.

(15) Exhibit No. 1583, Hearings, Part XII, p. 5498 at p. 5499.

(16) Hearings, Part XII, p. 5274.

cates that the Commission had in mind precisely the kind of borrowing-to-pay-dividends in which Missouri Pacific system roads indulged. The roads' repeated statements, therefore, that "no obligation of any character was incurred for the purpose of procuring funds to pay above dividends"(17) were clear violations of the Commission's clear instructions.

In addition to arguing that all borrowing is for the purpose of acquiring assets, Mr. Wyer argued that "you cannot earmark dollars".(18) "It is just as logical", his statement declared, "to say that a company borrows money to meet its pay rolls, or to buy coal, or to pay taxes, or to pay interest, as it is to say that it borrows to pay dividends."(19)

The difficulty with this view is that a railroad must meet its pay rolls, buy coal, and pay taxes and interest; while it need not pay dividends. Dividends come last on the list of disbursements, and can be paid only after operating charges are met.

In the typical situation under consideration, a railroad does not have enough cash on hand to meet its operating charges and at the same time to pay dividends. Accordingly, it borrows money. To say that it borrowed the money to buy coal is nonsense; it had enough money to buy coal, and it had to buy the coal. The railroad had no choice between paying dividends and paying for its coal. But the railroad did have a choice between not borrowing and not paying dividends on the one hand, and borrowing and paying dividends on the other. It chose to borrow and pay dividends.(20)

It is true that one other item among the railroad's cash needs, namely additions and betterments, are in part contingent. Thus Mr. Wyer was able to argue with some

(17) Carriers' Annual Reports to the Interstate Commerce Commission for 1930 and 1931; cf. Exhibit No. 1610, Hearings, Part XII, p. 5542 at 5543.

(18) Hearings, Part XI, p. 4734.

(19) Exhibit No. 1583, Hearings, Part XII, p. 5498 at p. 5499.

(20) Hearings, Part XII, pp. 5283-5284.

plausibility that "you cannot earmark dollars" as between dividends and additions and betterments. Money is borrowed; it is useless, says Mr. Wyer, to discuss whether the identical dollars borrowed went for additions and betterments or for dividends.(21)

The record of this subcommittee contains abundant evidence, however, that additions and betterments on Missouri Pacific lines during 1931 had been reduced to the irreducible minimum.(22) Following President Baldwin's instructions, for example, the N. O. T. & M. had made only those additions and betterments "that cannot possibly be deferred."(23) The Texas & Pacific net additions and betterments for 1931 were cut by 85 percent from the 1928 level.(24) Certainly whatever additions and betterments were made in 1931 on Missouri Pacific system roads were absolutely necessary; wherever the railroads had a choice, they postponed such expenditures. Thus the Missouri Pacific did not have a choice between making these minimum additions and betterments for paying dividends. But it did have a choice between paying dividends and borrowing on the one hand, or not paying dividends and not borrowing on the other. It chose to borrow and pay dividends, to the brink of bankruptcy.

Exhibit C

C-1

A-S

Houston, Jan. 9th, 1926.

Mr. L. W. Baldwin: The minutes of meeting of the Board of Directors of New Orleans, Texas & Mexico Rail-

(21) "* * * What I am saying is that * * * (the Missouri Pacific spent over $4,000,000 for additions and betterments that year which * * * (it) could not have spent if * * * (it) had not borrowed. So that is the first thing that you are going to hit if you are taking a shot at the things you are borrowing for. That is really what you are borrowing for." (Ibid., p. 5284.)

(22) See above, pp. 6-7, and footnotes thereto.

(23) Exhibit No. 1570, Hearings, Part XII, p. 5485; cf. Exhibit No. 1571, ibid., pp. 5485-5486.

(24) Exhibit No. 1590, ibid., p. 5520.

way Company held in New York October 27th, 1925, state that the Chairman reported that the estimated earnings of the Company for the three months ending November 30, 1925, would be in excess of the rate of 7% per annum on the capital stock of the Company and recommended the declaration of the quarterly dividend payable December 1, 1925, which was done.

The dividend requirement on New Orleans, Texas & Mexico Railway Co. capital stock was $259,575.75, based upon 1¾% on 148,329 shares outstanding. So long as we declare this dividend out of net income of New Orleans, Texas & Mexico Railway Co. it is necessary that New Orleans, Texas & Mexico Railway Co. itself earn a sufficient amount to warrant paying it.

The actual results of that line for the three months period ending with November 30, 1925, aggregated only $172,053.55, or 1.147% and fell short by the sum of $87,522.20 of the amount of dividend which has been declared and paid.

Mr. Andrews to whom I have referred this matter, concurs in my views that meetings of the Board of Directors of The Beaumont, Sour Lake & Western Railway Co. and The St. Louis, Brownsville & Mexico Railway Co. should be held and dividend declared out of the earnings of those companies for the current year, or so much thereof as may be necessary to protect the dividend already declared and paid by New Orleans, Texas & Mexico Railway Co.

Will you kindly advise if you desire meeting of the Boards of Directors of the two Texas companies mentioned called for the purpose of taking such action as may be necessary in the premises.

(Signed) H. R. SAFFORD.

(Pencil notation): O. K. F. P. Johnson.

C-2

St. Louis, January 14th, 1926.

1-340

Mr. H. R. Safford: Your letter January 9th relative quarterly dividend NOT & M Ry., payable December 1st, 1925.

Under the circumstances, there is nothing else to do but have Board meetings of the Beaumont, Sour Lake & Western Ry., and St. Louis, Brownsville & Mexico Ry., so they may declare dividend out of their earnings for the current year or so much thereof as may be necessary to protect the dividend already declared and paid by the N. O. T. & M.

(Stamped) (Signed) L. W. BALDWIN.

C-3

File B—5-0

Houston, Texas, March 27th, 1926.

Mr. Eckert: Regarding dividends being paid on NOT&M capital stock:

The net income of the NOT&M for the three months ended November 30th, 1925, fell short $87,522.20 of the amount required to pay the dividend of 1¾ on its capital stock, or $259,575.75. The dividend of 20% declared on the StLB & M capital stock February 12th, amount $100,000.00, was, as I understand it, to be first applied against this deficit, leaving $36,856.48 applicable to the three months period ended February 28th. This had the effect of leaving a net income on the NOT&M for the months of February available for dividend payable March 1st of $42,335.75.

The NOT&M income for December showed a deficit of $39,235.98, January net income $33,756.66, plus the above figure, resulted in a net of $36,856.43, for three months, or $222,719.32 short of the requirements if the Mar. 1st dividend is to be paid out of current income.

The net income of the StLB&M for the three months ended February 28th was as follows:

December, 1925—deficit	$ 20,781.70	(red)
January 1926	4,140.39	
February	59,750.65	
Total	43,109.34	

The February figure was that stated before deduction of $100,000.00 dividend, and after applying it the net for February would be $40,249.35 (red), and for the period $58,890.66 (red).

The net income on BSL&W for the same period was as follows:

December 1925	243.14	(red)
January 1926	23,875.94	(red)
February 1926	22,972.79	(red)
Total	47,091.87	(red)

The O&NW also went in red during the same period, and it appears that the current dividend being paid on NOT&M capital stock is not being earned. I have therefore refrained from placing the entry on the books deducting the March 1st dividend from income. The only solution I see is to declare dividends by the StLB&M and BSL&W from surplus in the past, also as large a dividend as possible by the Sugar Land and H&BV.

(Signed in ink) E. S. B.

C-4

File 5-O

Houston, March 27, 1926.

Mr. H. R. Safford: Referring to your file 482-2 in regard to the matter of dividends on the capital stock of New Orleans, Texas & Mexico Railway Company which was

paid on March 1st. It is again necessary that we take some action on behalf of our subsidiary companies with respect to declaring a dividend out of surplus of either The St. Louis, Brownsville & Mexico Ry. Co., or the Beaumont, Sour Lake & Western Ry. Co. for the purpose of taking care of the last dividend, as the income of the NOT&M Ry. Co. has been inadequate to pay out of its earnings the dividend which was declared by the Board of Directors.

Would you kindly have this matter placed before Mr. Cole in order that he may have suitable resolution prepared and passed on at the next meeting of the Board of Directors of the StLB&M Co. I will give him the amount which it will be necessary to provide from StLB&M funds.

(Not signed.)

cc—Mr. A. T. Cole.

(Notation:) E.S.B.—Pls. have prepared statement similar to one as marked for Dec., Jany., and Feb.

(Signed) M. E. 3/27

C-5

A-S

Houston, July 2nd, 1926.

(Personnel)

Mr. A. T. Cole: Referring to your conference with Mr. Anderson, with reference to meeting of Board of Directors of the StLB&M Railway Company, whose stock is owned by NOT&M Railway Company, for purpose of declaring dividend out of the earnings for the three months ending May 31st, 1926.

Following our past practice, it will be my desire to declare out of the StLB&M earnings, to extent of amount necessary to protect the dividend already declared and paid by the NOT&M, namely, $41,344.58.

You have scheduled adjourned annual meeting of Directors of the StLB&M for August, at which time this matter can be handled, and I would like for you to have our Legal Department prepare a resolution in proper form for presentation at that time.

(stamped:) (signed) H. R. SAFFORD,
A.

Cy—Mr. M. Eckert.

C-6

Houston, October 7, 1926.

Mr. L. W. Baldwin: I attach a statement showing the net result of operation of New Orleans, Texas & Mexico Railway Company during the months of June, July, and August 1926, which you will note shows net income of $78,958.55, or $180,617.20 short of the amount required to pay the 1-¾% dividend declared on the outstanding capital stock of the company paid as of September 1st.

It will, therefore, be necessary to again declare dividends on the Texas subsidiaries in favor of New Orleans, Texas & Mexico Railway Company to this extent.

Unless otherwise advised we will take the same action in arranging meeting of the Board of Directors of The St. Louis, Brownsville & Mexico Ry. Co., to declare a dividend sufficient in amount to protect the dividend on the NOT&M stock.

(Signed) H. R. SAFFORD.

(Ink notation:) Mr. Johnson is this alright.

W. G. V. 10/11

(Pencil notation:) Yes. F. P. Johnson. 10/12/26

C-7

Saint Louis, October 14, 1926.

Mr. H. R. Safford: Referring to your letter October 7th, regarding quarterly dividend NOT&M.

It will be satisfactory to arrange for Board meeting of the StLB&M to declare a dividend out of their earnings to protect the dividend on the NOT&M stock.

(Stamped:) (Signed) L. W. BALDWIN,
Per W. G. V.

C-8
A-S

Houston, Dec. 10th, 1926.

Mr. L. W. Baldwin: Referring to your letter November 8th, quoting resolution of the NOT&M Executive Committee held in New York November 4th with reference to dividend on the NOT&M stock for the three months ending November 30th, 1926.

From present indications the net deficit of the NOT&M for the above period will aggregate approximately $21,000 which will make it necessary, in addition to the dividend requirement of $259,575.75 as of December 1st, to again declare dividends on the Texas subsidiaries in favor of the NOT&M Railway Company, to the extent of approximately $281,000.

Unless advised to the contrary, we will take the same action in arranging meeting of the Board of Directors of the StLB&M Railway Company to declare a dividend sufficient to protect the above amount.

(Signed) H. R. SAFFORD.

(Ink notation:) Mr. Johnson. Is this alright.
W. G. V. 12/14

(Pencil notation:) 700,627.20—10 mos. This is O. K.
F. P. J.

C-9

Saint Louis, December 23, 1926.

Mr. H. R. Safford: Referring to your letter December 10th, file 482-2, regarding quarterly dividend NOT&M:

It will be satisfactory to arrange meeting of Board of Directors of St. L. B. & M. Railway Company to declare a dividend out of their earnings to protect the dividend on the N. O. T. & M. stock.

(Stamped:) (Signed) L. W. BALDWIN,
Per C. D. H.

C-10

(Pencil notation:) Mr. Johnson To note. W. G. V. 1/5/27. Noted F. P. Johnson.

B-S

Houston, January 1st, 1927.

Mr. L. W. Baldwin: I attach statement showing net results of N. O. T. & M. Railway Company during months September, October, and November, 1926, which you will note shows net income $20,268.96, or $239,306.79 short of the amount required to pay the one and three-quarter dividend declared on outstanding Capital Stock of the company payable as of December 1st.

It was therefore necessary to again declare dividends on the Texas subsidiaries in favor of N. O. T. & M., which was accomplished at meeting December 29th.

(Signed) H. R. SAFFORD.

C-11

Houston, Texas, March 29th, 1927.

File B-5-O

Mr. Eckert: Returning your file 5-O

The dividend requirement of 1-¾% on the N. O. T. & M.'s capital stock declared as of March 1st, 1927, was $259,575.75, compared with net income of the N. O. T. & M. for the three months ended February 28th of $253,043.86, as per statement attached, resulting in a deficit of $6,531.89, which I presume will have to be made up by a dividend on the capital stock of the St. L. B. & M. in favor of the N. O. T. & M.

(Signed in ink) E. S. B.

C-12

(Pencil notation): Mr. Johnson, Is this O. K. W. G. V. 6/11

E-S

Houston, June 8th, 1927.

Mr. L. W. Baldwin: Referring to your letter of April 29th, advising that resolution was adopted at meeting of the Board of Directors held in New York, April 26th, providing for payment of a dividend of 1-¾% on outstanding stock of the New Orleans, Texas & Mexico for the three months ending May 31st, 1927, payable June 1st, 1927 to stockholders of record as of May 14th, 1927.

For the months of March and April the N. O. T. & M. sustained a net deficit of $67,369.25, while an estimate for the month of May indicates a deficit of possibly $86,000.00 which will make it necessary to declare a dividend on the Texas subsidiaries in favor of the N. O. T. & M. Railway Company. Unless advised to the contrary, we will take the same action in arranging meeting of the Board of Directors of the St. L. B. & M. to declare dividend sufficient to protect the amount required.

As soon as available, I will forward statement showing net results of operation of the New Orleans, Texas & Mexico Railway Company, months of March, April and May 1927.

(Signed) H. R. SAFFORD.

Cy – Mr. F. P. Johnson

C-13

Saint Louis, June 14, 1927.

Mr. H. R. Safford: Referring to your letter June 8th, file 482-2, regarding quarterly dividend N. O. T. & M.

It will be satisfactory to arrange meeting of the Board of Directors of the St. L. B. & M. to declare dividend out of their earnings to protect the dividend on the N. O. T. & M. stock.

(Stamped) (Signed) L. W. BALDWIN,
per W. G. V.

cc–Mr. F. P. Johnson

C-14

(Pencil notation): Mr. Johnson To Note C. D. H. 7/5

E-S

Houston, July 2nd, 1927

Mr. L. W. Baldwin: Referring further to my letter of June 8th, in connection with matter of payment of a dividend of 1¾% on outstanding stock of the New Orleans, Texas & Mexico Railway Company for the three months ending May 31st, 1927.

I am enclosing herewith statement showing results of operation for the months of March, April and May, which indicates that the N. O. T. & M. sustained a net deficit of $173,005.12.

(Signed) H. R. SAFFORD.

cc: Mr. F. P. Johnson

C-15

E-S

Houston, September 20th, 1927

Mr. M. Eckert: Your letter of August 5th, file 5-0
Can you now advise when the earnings for the three months ending August 31st, will be available.

(Signed in ink) H. R. SAFFORD.

Notes thereon:

E. S. B. Please let me have usual statement—signed in pencil M. E.

Mr. Eckert: Attached will require a total dividend of $537,640.77 to cover deficit and provide 9/1 dividend. St. L. B. & M. dividend of $432,580.87 to cover June 1st N. O. T. & M. dividend has not yet been declared. St. L. B. & M. 1927 net is about $1,089,700 to date.

(Signed in pencil) E. S. B. 9/26

C-16

Houston, September 26, 1927

Mr. H. R. Safford: Your letter of August 4th, file 482-2.

I attach hereto statement showing the NOT & M results of operation for the months June, July and August, 1927, from which you will observe that the deficit is $278,065.02. It will, therefore, require a total of $537,640.77 to cover the deficit and provide the September 1st dividend.

In this connection the St. LB & M dividend of $432,580.87 to cover the June 1st dividend on the NOT&M stock has not yet been declared.

I am sending Mr. Cole a copy of this letter for his information.

Enc.

cc Mr. A. T. Cole.

(Not signed)

C-17

E-S

Houston, January 3rd, 1928

Mr. L. W. Baldwin: Your letter of November 5th:

I am enclosing herewith statement showing the results of operation of New Orleans, Texas & Mexico Railway Company for the months of September, October and November, 1927, which indicates that the net income for that period is short $192,650.38 of meeting the dividend on the stock of the NOT&M.

In order to provide for this dividend requirement the StLB&M should declare a dividend on its capital stock in favor of the NOT&M for the amount of this difference in order that this amount may be set up as income to the NOT&M in the year 1927.

(Signed) H. R. SAFFORD.

(Pencil notation): Mr. Johnson, Is this O. K.

W. G. V. 1/6/28. Mr. Vollmer.

Yes. F. P. Johnson

cc: Mr. F. P. Johnson

C-18

Saint Louis, January 9, 1928.

Mr. H. R. Safford: Referring to your letter January 3rd, file 482-2.

It will be satisfactory to arrange meeting of Board of Directors of the St. L. B. & M. to declare dividend on its capital stock in favor of the N. O. T. & M. in order to protect the N. O. T. & M. dividend.

(Stamped) (Signed) L. W. BALDWIN,
Per W. G. V.

C-19

E-S

(Pencil notation:) Mr. Johnson! W. G. V. 7/3

Houston, June 29th, 1928.

Mr. L. W. Baldwin: Your letter of May 8th, relative to payment of dividend of 1¾% on outstanding capital stock of the NOT&M Railway Company for the three months ended May 31st, 1928.

I now attach a statement showing the income account of the NOT&M Ry. Co. by months for the three months, indicating a total net income of $127,924.97, which is $131,650.78 short of the quarterly dividend requirement of $259,575.75. A dividend should be declared by the subsidiary companies to increase the NOT&M net income for that period to the amount of the dividend requirement equivalent to 1¾% on the outstanding capital stock of the NOT&M Ry. Co.

(Signed) H. R. SAFFORD.

cc: Mr. F. P. Johnson

(Pencil notation:) Mr. Vollmer: This is correct—The StLB&M Ry. Co. Net Income, same period, was $308,928.32. F. P. Johnson.

C-20

Houston, Texas, September 27th, 1928.

(Pencil notation:) Mr. Johnson—Is this O. K. W. G. V. 10/2 O. K. F. P. Johnson.

Mr. L. W. Baldwin: Your letter of August 8th, relative to payment of dividend of 1¾% on outstanding capital stock of the NOT&M Railway Company for the three months ended August 31st, 1928.

I now attach a statement showing the income account of the NOT&M Ry. Co., by months, for the three months,

indicating a net deficit of $19,235.00 or an amount of $278,811.35 short of the dividend requirement of 1¾% on the capital stock of the company for that quarter.

Dividends should, therefore, be declared by the subsidiary lines in favor of the NOT&M for that amount.

(Signed) H. R. SAFFORD.

cc–Mr. F. P. Johnson

C-21

St. Louis, October 8, 1928.

Mr. H. R. Safford: Referring to your letter September 27th, file 482-2 regarding quarterly dividend on capital stock of the NOT&M Railway Company.

It will be satisfactory to arrange meeting of the Board of Directors of subsidiary lines and declare dividend out of their earnings to protect the dividend on the NOT&M stock.

(Stamped:) (Signed) L. W. BALDWIN,
Per E. F. B., Jr.

10

(Pencil Notation:) O. K. F. P. J.

C-22

St. Louis, January 6, 1929

Mr. Safford: Referring to your letter of December 31, file 482-2.

It will be satisfactory for dividend to be declared by subsidiary lines in favor of the New Orleans, Texas and Mexico Railroad Company to make up deficit resulting from payment of N. O. T. & M. dividend of 1¾% for the three months ended November 30, 1929, and you may arrange accordingly.

(Signed) L. W. BALDWIN,
Per C. D. P.

C-23

E-S

Houston, Texas, January 7, 1929

(Pencil notation:) Mr. Johnson, Is this O. K. W. G. V. 1/10.

Mr. L. W. [Bladwin]: Your letter of October 29th, with reference to payment of dividend of 1¾% on outstanding stock of the New Orleans, Texas & Mexico Railway Company for the three months ending November 30th, 1928, payable December 1, 1928, to Stockholders on record as of November 15th, 1928.

I am now attaching statement showing that the net income of the NOT&M Railway Company for the three months ending November 30th, 1928, was $30,078.29, or $229,497.46 short of the December 1st dividend requirements of 1¾% on the capital stock of the company.

Dividends should, therefore, be declared by the subsidiary lines in favor of the NOT&M for that amount.

(Signed) H. R. SAFFORD.

cc–Mr. F. P. Johnson.

(Ink notation:) Mr. W. G. Vollmer, This is correct. F. P. J. 1/11/29.

———

C-24

January 12, 1929

Mr. H. R. Safford: Referring to your letter of January 7th, file 482-2.

It will be satisfactory to arrange meeting of the Board of Directors of subsidiary lines and declare dividends out of their earnings to protect the dividend on the N. O. T. & M. stock.

Copy to Mr. F. P. Johnson.

(Stamped) (Signed) L. W. BALDWIN,
Per E. F. B., Jr.

———

C-25

Houston, March 26th, 1929

Mr. L. W. Baldwin: Your letter of January 23rd in regard to payment of 1¾% on outstanding stock of the N. O. T. & M., for the three months ending February 28th, 1929, payable March 1st, 1929, to stockholders of record as of February 15th, 1929:

I am attaching hereto statement showing that the net income of the N. O. T. & M. for the three months ending February 28th, 1929, is $277,746.17 short of dividend requirement as of March 1st, which aggregates $259,575.75 per quarter. Dividends should, therefore, be declared by the subsidiary lines in favor of the N. O. T. & M. to make up this deficit.

(Signed) H. R. SAFFORD.

CC to Mr. F. P. Johnson

(Pencil notation): No enclosures.

C-26

Houston, July 7th, 1930

Mr. L. W. Baldwin: Referring to your letter of April 18th, concerning action taken by the Executive Committee of the New Orleans, Texas & Mexico Railway Company on April 15th.

The net income of the N.O.T. & M. for the three months ending May 31st, 1930, amounted to $81,007.05, or $178,568.70 short of the June 1st dividend requirement of $259,575.75.

In this connection am attaching hereto statement showing results of operation for the months of March, April, and May, 1930.

We will arrange for Mr. Cole to list for action at the next meeting of the Board of Directors of the St. Louis,

Brownsville & Mexico Railway Company a resolution providing that dividend for the sum of $178,568.70 be declared out of surplus of the St. L.B. & M. in favor of the N.O.T. & M.

(Stamped) H. R. SAFFORD.
L.

BCC to Messrs:

M. Eckert: Your file 5-0.

A. T. Cole: Won't you please arrange accordingly.

H. R. S.

C-27

Houston, January 10th, 1931

Mr. L. W. Baldwin: The net income of the NOT&M for the three months ending November 30th, 1930, reflects a deficit of $56,613.10, which is $316,188.85 short of quarterly dividend requirement of the NOT&M due December 1st, 1930.

I am attaching hereto statement showing result of operations for the months of September, October, and November 1930.

Following past practice, we will arrange for Mr. Cole to list for action at the next meeting of the Board of Directors of the StLB&M, a resolution providing that dividend be declared out of the surplus of the StLB&M in favor of the NOT&M.

(Stamped) H. R. SAFFORD.
F.

Bcc to Messrs:

M. Eckert: Your letter January 5th, file 5-0

A. T. Cole: Won't you please arrange in line with the above. (signed on typewriter) H. R. S.

C-28

St. Louis, Mo., January 13, 1931

Mr. Safford: Referring to your letter of January 10th, file 482-2, with reference to declaring dividend out of the surplus of the St. Louis, Brownsville & Mexico Railway Company in favor of the New Orleans, Texas & Mexico Railway Company.

It will be satisfactory to handle this in line with your letter.

(Stamped) (Signed) L. W. BALDWIN,
Per C. D. P.

C-29

Houston, Texas, April 4th, 1931.

(Pencil notations): Mr. Johnson, Any comments? L. W. B. 4/7. No comments, F. P. Johnson.

Mr. L. W. Baldwin: The net income of the NOT&M for the three months ending February 28th, 1931, reflects a deficit of $79,315.13, which is $338,890.88 short of quarterly dividend requirement of the NOT&M of $259,575.75.

I am attaching hereto statement showing result of operations for the months of December 1930, and January and February 1931.

Following past practice, we will arrange for Mr. Cole to list for action at the next meeting of the Board of Directors of the StLB&M, a resolution providing that dividend be declared out of the surplus of the StL&M in favor of the NOT&M.

(Signed) H. R. SAFFORD.

C-30

At New York, April 16th, 1931

Mr. Safford: I want to impress upon you again the fact that although it may necessitate a much more drastic curtailment of expense than you have ever had or anticipated, the NOT&M must earn and pay its dividend this year and have $100,000. left in addition.

In this connection I want further to impress you with the necessity of curtailing expenditures chargeable to Additions & Betterments and only submit or authorize such items that cannot possibly be deferred.

(signed in pencil) L. W. BALDWIN.

C-31

Houston, April 28th, 1931

Mr. Baldwin: Replying to your letter of April 16th written at New York setting a goal for Gulf Coast Lines net income for the year 1931.

We have made a survey of the situation and have prepared statements indicating what we believe is a conservative estimate of the probable gross earnings, and showing operating expenses and other charges as now programmed and which are very close to the irreducible minimum unless we make some further drastic reduction in service.

The realization of the goal indicated by you is largely dependent upon gross earnings. Actual results for the first three months of the year reflect a decrease in total railway operating revenues of $1,324,505, and present indications are that April will show a further decrease of something like $350,000, making the total decrease for four months $1,674,000 as compared with the same period last year. The general conditions effecting this decrease will no doubt continue but will be off-set in a measure by

the special movement of East Texas oil to Baytown, Atreco, and Pt. Arthur, which traffic incidentally takes a very low rate per car, and by increased movement of citrus during the latter part of the year. The major trends in our freight traffic are shown in a separate statement attached. Passenger revenues are showing a very substantial reduction under last year and there are no prospects for improvement in the near future.

Taking all these factors into consideration, we are estimating gross revenues for the year at $12,889,034, a reduction of $2,539,387 or 16.4% under 1930. As stated above, for the first four months our gross revenue will be $1,674,000 or 26% behind the same period last year.

Our Maintenance of Way and Structures expenses are now programmed at $1,801,507, a reduction of $591,622 or approximately 25% under last year. We have reduced our operating expenses in connection with improvements from $382,600, as originally budgeted, to $55,100; this involves deferring all rail and ballast work. We plan on using 150,000 cross ties as compared with 212,000 last year.

Our present program for Maintenance of Equipment means that we must hold our expenditures for the year to $2,102,409, a reduction of $621,756 or 22.8% under last year. This will be the lowest expenditure for MofE since 1924 and provides running repair money only for locomotives and cars, except that we will be able to turn out about 15 Class 1, 2 and 3 repairs as compared with 49 last year. At the end of 1931 there will be about 30 engines which will have run out their assigned mileage.

Transportation Expenses are estimated at $3,654,538, a reduction of $508,189 under last year, the estimated transportation ratio being 28.35, as compared with 26.98 last year. This estimate gives effect to the reduction in passenger service on the Kingsville Division in January, amounting to approximately 242,000 train miles per annum; also, takes into consideration a substantial improvement in freight train performance as a result of placing 1200-class engines on the Kingsville Division. The estimate further involves a very close check of our super-

visory, yard, and station forces which is now being done. The increase in transportation ratio anticipated is entirely due to the low level of earnings.

We will not be able to show much reduction in hire of freight cars because of the fact that such increases as we anticipate in freight traffic will be largely in oil and vegetables, involving increase in private line mileage.

Net income for the year on this basis is estimated at $457,519, a reduction of $644,382 under last year and $680,581 under the goal set by you in your letter mentioned above.

The net result falls far short of what you want to accomplish and I realize this is disappointing and am still hopeful we can improve it and we shall make every possible effort to do so. Our present program for MofW and MofE is materially under last year and we have felt that we have gone as deeply into these expenditures as we could without impairing, the standard of service, but we will continue to check this further to see what more can be done, in recognition of your request.

(signed in pencil) H. R. S.

C-32

Houston, May 7, 1931

(Personal)

Mr. Johnson: Mr. Baldwin has set a goal for Gulf Coast Lines net income for the year 1931 and our careful survey and estimate recently sent him of net results falls far short of what he [want] us to accomplish. While this conservative estimate is about $300,000 less than the goal, we could take a more optimistic view and set a somewhat higher figure but we still believe the net will fall short $200,000 or more.

You will recall that on instructions from Mr. Baldwin we were obliged to set up interest on I-GN advances and

open accounts retro-active to January 1926. We have accrued in the accounts of the Gulf Coast Lines and subsidiary companies to the end of March, 1931 the sum of $362,436.14, of which $143,758.87 has come out of Gulf Coast Lines income. I am not at all familiar with Mr. Baldwin's thoughts about this whole matter and I thought it well to bring it to your attention for advice as to whether or not he might be interested in considering the reversal of these accruals—no part of which has been paid over to the I-GN-provided, of course, that the condition of the I-GN at the end of the year will permit.

This thought is prompted solely by a desire to help the Gulf Coast Lines in the event we are unable to reach the goal of $1,120,000 net set by Mr. Baldwin.

(Stamped) J. E. ANDERSON.

C-33

Houston, June 20th, 1931

Mr. Baldwin: I attach a statement showing interest on I-GN advances and open accounts as of May 31st, 1931, accrued by the Gulf Coast Lines from January 1926. This interest aggregates $377,882.20, and for the month of May the total debit taken in the accounts of the four GCL was $1,186.81, and the grand total for all lines $4,551.95. Up to the end of April none of this interest had been paid. In June we were able to transfer the sum of $250,000 to the SAU&G, with which it paid the I-GN interest in the amount of $116,663.30, the balance being applied on the principal.

I appreciate that this action was authorized by the Board of Directors, and we probably cannot therefore change or discontinue it even though the lines do not earn the interest. However, no provision was made for accruing interest on the balances in the accounts of the GCL against the I-GN, and from January 1st, 1926, to May 31st, 1931, interest on such balances in open accounts will

approximate $100,000. Do you not think that provision ought to be made to set up interest on these GCL balances so that we could, in a measure, at least, offset the amounts we are accruing in income accounts on the GCL in favor of the I-GN?

Effective with May 1st we have discontinued accruing interest on I-GN adjustment bonds in GCL accounts, which will aggregate $4,111.50 per month. While it is true this interest is cumulative it has not been declared, and therefore it is not deemed proper to accrue it. This will have a further bad effect upon the GCL net results.

Will you kindly advise me if this plan has your approval?

(Signed with stamp) H. R. SAFFORD.

C-34

St. Louis, July 2, 1931

Messrs. H. R. Safford, F. P. Johnson:

Referring to Mr. Safford's letter of June 20th regarding matter of accruing interest in favor of the I-GN on advances and open accounts:

In view of present conditions, it will be satisfactory to discontinue accruing interest on open accounts in favor of the I-GN effective June 1, 1931.

(Signed in ink) L. W. BALDWIN.

Answer of Reconstruction Finance Corporation and the Group of Institutional Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds to the Petition of Andrew J. Comstock.

(Filed November 29, 1944.)

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

The answer of Reconstruction Finance Corporation (hereinafter called the "RFC") and the Group of Institutional Holders of First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company (hereinafter called the "Group") to the petition, sworn to on November 15, 1944, of Andrew J. Comstock respectfully shows upon information and belief:

1. They admit the allegations contained in paragraphs 1, 4, 6, 7 and 17.

2. Answering paragraph 2 of the petition, they admit that the New Orleans, Texas & Mexico Railway Company (hereinafter called the "New Orleans") is, and at the times mentioned in said petition was, a railroad corporation duly organized and existing under the laws of the State of Louisiana, and that more than a majority of the issued and outstanding voting stock of the New Orleans was owned by the Missouri Pacific Railroad Company (hereinafter called the "Missouri Pacific") from about the year 1925 to March 31, 1933, subject, however, as to certain of said shares to the lien securing the 5¼% Secured Serial Bonds; they deny that the Missouri Pacific has owned any of the voting stock of the New Orleans since March 31, 1933, and, except as so admitted and denied, they deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph.

3. Answering paragraph 3 of the petition, they admit

that petitions under Section 77 of the Bankruptcy Act were filed on behalf of the Missouri Pacific and the New Orleans on March 31, 1933, and that subsequent to said date petitions herein under Section 77 of the Bankruptcy Act were filed on behalf of subsidiaries of the Debtor, and, except as so admitted, they deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph.

4. Answering paragraph 5 of the petition, they admit that the Debtor now has outstanding the following securities: $40,615,900 principal amount of First Mortgage Bonds (exclusive of $1,900,000 of said Bonds pledged with Missouri Pacific and by it repledged with the RFC); $2,354,100 principal amount of 5% Income Mortgage Bonds and 148,329 shares of capital stock which has sole voting power, and, except as so admitted, they deny each and every allegation contained in said paragraph 5.

5. Answering paragraph 8 of the petition, they admit that, by order of this Court heretofore entered herein, the foreclosure of the lien securing the 5¼% Secured Serial Bonds of the New Orleans has been stayed, and, except as so admitted, they deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph.

6. Answering paragraph 9 of the petition, they deny knowledge or information sufficient to form a belief as to the allegations therein contained.

7. Answering paragraph 10 of the petition, they admit that Missouri Pacific filed a claim in these proceedings against New Orleans in the amount of $10,565,226.78, and, except as so admitted, they deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph.

8. Answering paragraph 11 of the petition, they deny each and every allegation therein contained.

9. Answering paragraph 12 of the petition, they admit that the 5¼% Secured Serial Bonds were issued by Missouri Pacific on or about December 1, 1926, and that

121,460 shares of capital stock of the New Orleans are pledged as collateral security under the Indenture pursuant to which said bonds were issued, and, except as so admitted, they deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph.

10. Answering paragraph 13 of the petition, they deny knowledge or information sufficient to form a belief as to any of the allegations therein contained.

11. Answering paragraph 14 of the petition, they deny knowledge or information sufficient to form a belief as to the alleged wrongful acts of spoilation and waste, and, except as so denied, they deny each and every of the allegations contained in said paragraph.

12. Answering paragraph 15 of the petition, they deny knowledge or information sufficient to form a belief as to any of the allegations contained in said paragraph.

13. Answering paragraph 16 of the petition, they admit that petitioner sought in an improper manner to present certain of the matters complained of in the petition at the hearings before the Interstate Commerce Commission on plans of reorganisation of the Missouri Pacific and other Debtors herein; they deny that the statements attributed to the Interstate Commerce Commission and to the Director of Finance in said paragraph 16 are a full, true and correct statement of the position of the Interstate Commerce Commission as set forth in the report referred to in said paragraph with respect to the matters alleged in said paragraph; and they deny knowledge or information sufficient to form a belief as to the purpose of the petition.

14. Answering paragraph 18 of the petition, they deny each and every allegation therein contained.

15. Answering the first paragraph of paragraph 19 of the petition, they deny knowledge or information sufficient to form a belief as to whether or not this Court or the Master appointed by the Honorable C. B. Faris, District Judge, has specified the particularity or the time whereby

or within which objections to claims were to be filed or as to whether the records disclose that there are claims which have not yet been disposed of, and, except as so denied, they admit the allegations contained in said first paragraph.

Answering the second paragraph of paragraph 19 of the petition, they admit that by an order of this Court claims arising out of the disaffirmance by the Trustee of the Debtor's contracts or arrangements may be filed at any time within thirty days after such disaffirmance; that by several orders of this Court the time in which the Trustee may elect to affirm or disaffirm contracts or arrangements of the Debtor has been extended upon application of the Trustee from time to time; that the validity of the claim of Missouri Pacific against the New Orleans referred to in said paragraph had been questioned by one or more petitions filed herein in this Court, none of which petitions have been granted, and, except as so admitted, they deny each and every allegation in said second paragraph contained.

16. Answering paragraph 20 of the petition, they state that the statements therein are merely of the petitioner's understanding of the law, and for that reason they make no answer to said paragraph.

17. Answering paragraph 21 of the petition, they admit that no hearing was ever ordered and that no hearing was ever held on the claim of the Missouri Pacific against the New Orleans referred to in said paragraph, and that Guy A. Thompson, as Trustee of the New Orleans, has taken no action to expunge the claim referred to in said paragraph; they deny knowledge or information sufficient to form a belief as to what is known to the petitioner, and, except as so admitted and denied, they deny each and every allegation contained in said paragraph.

18. Answering paragraph 22 of the petition, they deny knowledge or information sufficient to form a belief as to the allegations therein contained.

19. Answering paragraph 23 of the petition, they deny

knowledge or information sufficient to form a belief as to why the petitioner has failed to make the request therein referred to; they allege that the Trustee is an officer of the Court, whose function is to administer under the direction of the Court all the property placed in the custody of the Court in the proceeding, impartially and with due regard to the rights of all interested parties. Partisan representation of particular classes of securityholders is not part of the duty of the Trustee. That is the function of the trustees of the mortgages or indentures securing the respective issues, or of protective committees or other duly authorized representatives of the respective classes of securityholders. Such partisan representation, as is demanded in the petition, is neither necessary nor proper in a proceeding for reorganization under Section 77 of the Federal Bankruptcy Act; except as so denied and alleged, they deny each and every allegation contained in said paragraph.

20. Answering paragraph 24 of the petition, they deny the allegations contained in the first sentence of said paragraph; they admit that in 1937 the Irving Trust Company, as Trustee under the Indenture securing the First Mortgage Bonds of the New Orleans, and the Walker Committee, representing Bonds of said issue, filed the petitions referred to in said paragraph; that answers to said petitions were filed; that no hearings have been held upon the issues presented by said petitions and answers; that an order continuing the hearings on said petitions was entered; that no order of dismissal of said petitions has been sought by Guy A. Thompson, as Trustee, or by any of the parties, and, except as so admitted, they deny knowledge or information sufficient to form a belief as to the allegations in said paragraph contained.

21. Answering paragraph 25 of the petition, they deny that petitioner properly raised the question of the validity of the claim referred to in said paragraph at the hearings before the Interstate Commerce Commission on October 19-21, 1943, and that petitioner was directed to present the question referred to in said paragraph to this Court, and, except as so denied, they admit the allegations contained in said paragraph.

22. Answering paragraph 26 of the petition, they deny that the proceeding attempted to be initiated by the petition is necessary for any reason whatsoever; they deny the allegations contained in subparagraph (d) thereof, except so much of said sub-paragraph as contains a quotation from an opinion of Honorable C. B. Faris; and they deny the allegations contained in sub-paragraph (e) of said paragraph.

23. Answering paragraph 27 of the petition, they allege that a large part of the proof with respect to the matters referred to in the petition consists of the testimony of witnesses, many of whom are dead, and, except as so alleged, they admit the allegations contained in said paragraph.

24. Answering paragraph 28 of the petition, they deny knowledge or information sufficient to form a belief as to whether or not the petitioner has heretofore caused to be made or participated in the making of an application for the relief prayed for in the petition.

25. Answering paragraph 29 of the petition, they deny knowledge or information sufficient to form a belief as to what the petitioner believes, and they deny that Guy A. Thompson, as Trustee of the New Orleans, is disqualified to exercise fully all of his rights and powers as such Trustee.

26. Answering paragraph 30 of the petition, they deny knowledge or information sufficient to form a belief as to the allegations therein contained.

First Defense.

As and for a first defense, the RFC and the Group allege as follows:

27. That, if the petitioner has any rights in respect of the matters complained of in the petition, he is entitled under the Bankruptcy Act to assert such rights in his own name. It is unnecessary and would be improper for

the petitioner to proceed in the name of Guy A. Thompson, as Trustee in Bankruptcy of the New Orleans, as requested in said petition.

Second Defense.

As and for a second defense, the RFC and the Group assert:

28. That the petition should be dismissed for the reason that the petition fails to comply with the requirements of Rule 23 (b) of the Rules of Civil Procedure for the District Courts of the United States.

Third Defense.

As and for a third defense, the RFC and the Group allege:

29. These reorganization proceedings were instituted on March 31, 1933, over eleven years ago. During this lengthy period, orders have been made by this Court requiring the filing of claims within periods specified therein, which periods and the time for filing objections to all of such claims have long since expired. In accordance with the provisions of Section 77 of the Bankruptcy Act, investigations have been made by the Bankruptcy Trustee herein as to any facts pertaining to irregularities, fraud, misconduct or mismanagement, as a consequence of which any of the Debtors herein might have a cause of action arising therefrom against any person or corporation, and such investigations have long since been concluded and reports based thereon made to this Court. In connection with the formulation of plans of reorganization herein, the Interstate Commerce Commission and this Court have gone fully into all matters and things which would or might be claimed to be involved in the formulation of a plan, including the matters and things referred to in the petition, and all interested parties have had full and complete opportunity to be heard thereon. Upon the basis of such full consideration the Interstate Commerce Commis-

sion and this Court have approved a plan of reorganization, and after such plan had ultimately failed of effectuation on other grounds, the Interstate Commerce Commission again held a full hearing, and under dates of July 4, 1944 and October 9, 1944, has handed down its second and third supplemental reports and orders approving a revised plan of reorganization herein and reaffirming its conclusion that the contentions made by the petitioner in the petition are without merit. Petitioner is now seeking to reopen the record and litigate *de novo* issues which have heretofore been fully explored. The reopening of the record and the relitigation of said issues at this time as contemplated by said petition would be without justification, wholly inequitable, and would serve no useful purpose, but on the contrary would be subversive of the purpose of Section 77 of the Bankruptcy Act to provide a means for the prompt and economical reorganization of railroads subject to said Section 77.

30. By Order No. 19, dated May 13, 1933, entered herein, this Court directed that creditors of the Missouri Pacific, the New Orleans and other Debtors in these proceedings, with certain specified exceptions, should file claims prior to August 31, 1933. By Order No. 451 herein, filed February 27, 1936, provision was made for the filing within sixty days of certain additional claims, including those of the RFC. In accordance with these respective orders, proofs of claim were filed by Missouri Pacific covering the advances referred to in the petition and by RFC showing $9,955,226.78 of such advances as part of its collateral. No objection has ever been filed to either of said proofs of claim, although such proof of claim of Missouri Pacific has been on file herein for over ten years and the claim of RFC for over eight years, and the appropriate time for filing such exceptions has long since elapsed.

31. In accordance with the provisions of Section 77c(9) of the Bankruptcy Act, the Trustee herein reported to this Court, after investigation, regarding facts pertaining to irregularities, fraud, misconduct or mismanagement as a consequence of which any of the Debtors herein might

have a cause of action arising therefrom against any person or corporation. Following such report, by Order No. 453, filed herein on March 2, 1936, the Court requested the Interstate Commerce Commission to advise the Court of any such facts known to it. Neither the reports of the Bankruptcy Trustee nor the advices received from the Commission pursuant to such request purport to set out any cause of action based on the matters and things set out in said petition above mentioned, although the Trustee and said Commission were fully familiar with such matters and things. Said reports and advices have been on file with this Court for many years and have never been challenged by any parties to these proceedings.

32. In accordance with the provisions of Section 77 of the Bankruptcy Act, hearings with respect to the reorganization of the Missouri Pacific and New Orleans and the other Debtors herein were held before the Interstate Commerce Commission on February 4-7, 1936, February 10-13, 1936, April 14-24, 1936, March 9-10, 1937, May 4-6, 1937, June 21-23, 1937, July 26-27, 1937 and September 27-30, 1937. At these hearings full opportunity was afforded and used for the presentation of all evidence relevant to the formulation of a plan, including detailed testimony pertinent to the relations from time to time existing between Alleghany Corporation, Missouri Pacific and New Orleans, the advances by the Missouri Pacific to the New Orleans, the dividends on the New Orleans stock and the other transactions between the New Orleans and the Missouri Pacific referred to in the petition. Following briefs and argument before the Commission, a report and order dated January 10, 1940 and a supplemental report and order dated April 9, 1940, were issued by the Interstate Commerce Commission approving a plan of reorganization for the Debtors herein and in connection therewith passing upon the matters and things referred to in said petition and upon substantially the same contentions as those now sought to be made by the petition. After full hearings and arguments before this Court on June 9, 1940 and October 7-10, 1940, said plan of reorganization and the determination of said questions by the Commission were fully ap-

proved by this Court. The plan so approved having later failed of effectuation for other reasons, a further hearing with respect to reorganization of the Debtors herein, was held before the Interstate Commerce Commission on October 19-21, 1944, at which full opportunity was again afforded for the presentation of all evidence relevant to the formulation of a plan of reorganization herein, including some evidence relating to the matters and things referred to in said petition, other alleged evidence relating to such matters and things being properly rejected for reasons set forth in the transcript of said hearing. The Interstate Commerce Commission has now by said supplemental reports and orders, dated respectively July 4, 1944 and October 9, 1944, approved a revised plan of reorganization reaffirming its conclusion that the contentions sought to be relitigated by the petitioner as set forth in the petition are without merit.

Fourth Defense.

33. As and for a fourth defense, the RFC and the Group reallege each and every allegation contained in paragraphs 29 to 32, inclusive, of this answer and assert that the petition should be dismissed for the reason that it fails to comply with Rule 24 of the Rules of Civil Procedure for the District Courts of the United States in that the application made by the petition is not timely.

Fifth Defense.

As and for a fifth defense, the RFC and the Group assert:

34. Any control of the New Orleans by the Missouri Pacific and any mismanagement of the former by the latter, if such mismanagement existed, was necessarily made possible by and carried out through and by means of ownership of the common stock of the New Orleans. The rights asserted by the petitioner in the petition are asserted as, and only as, the alleged equitable owner of such common stock. Accordingly, said petitioner, claiming

through and as the alleged owner of the very common stock by which the claimed mismanagement is alleged to have been carried out, does not come into this Court with clean hands and is in no position to contend that other interests should be held invalid or [subordinarted] to his own by reason of such claimed mismanagement.

Sixth Defense.

As and for a sixth defense, the RFC alleges:

35. In accordance with the provisions of the Reconstruction Finance Corporation Act, as amended, and with appropriate approval of the Interstate Commerce Commission, RFC made various loans to Missouri Pacific which are now in default. Said loans are outstanding in the principal amount of $23,134,800, plus substantial interest, and are secured by the pledge of important collateral. Included among said collateral are notes of the New Orleans in the principal amount of $9,955,226.78 originally given in payment of the same principal amount of the advances by Missouri Pacific to the New Orleans referred to in the petition. RFC became the pledgee holder of said notes and the assignee of the advances in payment of which the same were given, bona fide and for value, and without knowledge of any of the matters and things referred to in the petition. Under these circumstances, whether or not any effect might be given to the matters and things referred to in the above mentioned petition as against the Missouri Pacific or as against any of the other parties to this proceeding, said matters and things are without effect in relation to RFC and said notes in the hands of RFC or its assigns constitute the valid, legal and binding obligations of the New Orleans to the extent required to satisfy RFC's loans as aforesaid.

Seventh Defense.

As and for a seventh defense, the RFC alleges:

36. By its report and order dated February 25, 1933, in Finance Docket No. 9817, the Interstate Commerce Com-

mission found that the issuance by the New Orleans of a note or notes in an aggregate amount not exceeding $7,456,726.78 (a) was for a lawful purpose within its corporate purposes, and compatible with the public interest, which was necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier and which did not impair its ability to perform that service, and (b) was reasonably necessary and appropriate for such purpose. In accordance with such determination the Interstate Commerce Commission, by its said order, authorized the issuance of said note in the principal amount of $7,456,726.78 by the New Orleans. Said note was thereafter duly issued and pledged with the RFC and constitutes part of the $9,955,226.78 principal amount of such notes held by RFC as set out in paragraph 35 hereof. Approval by the Interstate Commerce Commission of the issuance of the additional note in the principal amount of $2,498,500 held by RFC was not required under the provisions of the Interstate Commerce Act.

Eighth Defense.

As and for an eighth defense, the RFC and the Group allege:

37. Many of the officers and directors of the Missouri Pacific and the New Orleans and other persons having knowledge concerning the matters complained of in the petition have died. In failing to assert the alleged rights claimed in the petition at any time during the eleven year course of the proceedings herein, and until after long years of effort on the part of all interested parties, a plan of reorganization is on the verge of approval and consummation herein, the petitioner has been guilty of inexcusable laches and is equitably estopped to assert his alleged rights at this time. To permit such assertion, particularly in a court applying principles of equity, would be prejudicial to the rights of creditors generally and would be unfair and inequitable to the court, the Interstate Commerce Commission and all other parties interested in these reorganization proceedings.

Wherefore, the RFC and the Group respectfully pray that the prayer of said petition be denied and that they may have such other and further relief as to this Court may seem just and proper.

Dated November 25, 1944.

RECONSTRUCTION FINANCE CORPORATION,
By JAMES L. HOMIRE,
Chief Railroad Counsel.

JAMES L. HOMIRE,
EMMET McCAFFERY,
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St. Louis, Missouri,

Attorneys for Reconstruction Finance Corporation:

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Of Counsel,
Boatmen's Bank Building,
St. Louis, Missouri.

GROUP OF INSTITUTIONAL INVESTORS HOLDING FIRST AND REFUNDING MORTGAGE 5% GOLD BONDS OF MISSOURI PACIFIC RAILROAD COMPANY,

By W. LLOYD KITCHEL, Their Attorney,
14 Wall Street, New York 5, N. Y.

CHARLES W. McCONAUGHY,
Of Counsel.

Transcript of Proceedings on Petition of Andrew W. Comstock for Order Granting Leave to Petitioner, in the Name of Guy A. Thompson, Trustee, to File Objections to Claim of Missouri Pacific Railroad Company Against New Orleans, Texas & Mexico Railway Company, Etc.

(Filed January 5, 1945.)

District Court of the United States
in and for the
Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

Be It Remembered: That on December 1, 1944, during the September Term, 1944, of the District Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, there came on to be heard before the Honorable George H. Moore, Petition of Andrew W. Comstock for an order granting leave to petitioner in the name of Guy A. Thompson, Trustee of Debtor, to file objections to claim of Missouri Pacific Railroad Company against New Orleans, Texas & Mexico Railway Company; to participate in any and all proceedings, wherein validity or sufficiency of said claim may be involved, and to take all action, etc., and to grant petitioner leave to intervene specially for such purposes, whereupon the following proceedings were had:

Appearances:

Dunbar & Biggs, by William H. Biggs and Maxwell Brandwen, for Andrew W. Comstock, Petitioner.

Mr. W. Lloyd Kitchel and Mr. Jacob Chasnoff, for

Group of Institutional Holders of Missouri Pacific First and Refunding Bonds.

Mr. James L. Homire, Mr. Emmet T. McCaffery, and Mr. John Raeburn Green, for Reconstruction Finance Corporation.

Mr. Richard S. Bull, for Chemical Bank & Trust Company, Trustee, Missouri Pacific Serial 5¼% Gold Bonds.

Mr. Russell L. Dearmont and Mr. T. Railey, for Guy A. Thompson, Trustee, Missouri Pacific Railroad Company.

Mr. Marion B. Pierce, for Missouri Pacific Railroad Company, Debtor.

Mr. Everett Paul Griffin, for Protective Committee for International-Great Northern First Mortgage Bonds.

The Court: You may proceed.

Mr. Kitchel: May I make a preliminary suggestion, which perhaps will save some of the Court's time, with your permission?

Mr. Brandwen: It will be all right.

Mr. Kitchel: If the Court please, the petitioner here asks to take some steps in regard to the claim of the Missouri Pacific Railroad Company against the New Orleans, Texas & Mexico Railway Company, in the name of the Trustee. As a matter of fact, the petitioner can take that action himself. Section 77 provides that when a plan is certified to the Court, the Court will make an order providing that objections should be filed and that a hearing should be had on the objections. In this case that order has been made; objections have been filed by this same client raising this same point, and by the same attorney, and he is entitled, under the statute, to be heard on January 8th, when this plan comes up for approval.

He does not need, in the name of the Trustee, to proceed.

That claim will have to be contested at that date, and it seems to me to be a waste of time to endeavor to start a special proceeding which will bring up the same thing.

I move that the petition be dismissed, without prejudice, however, and that the claim then be heard on January 8th.

Mr. Brandwen: If the Court please, I agree fully, in part, with what Mr. Kitchel has just said. I have always urged, and I am happy to observe that Mr. Kitchel agrees, that when the hearing on the fairness and equity of the Plan comes up, on January 8th, that, of course, the validity and the rank, if any, of that claim must be determined in connection with those proceedings. That is completely correct. I agree with Mr. Kitchel on that.

I do not agree with Mr. Kitchel that we do not have a right to the present relief which is being sought by this application. The application which is being addressed to your Honor's consideration this morning is one in which an applicant requests leave for an order so that he, in the name of the Trustee, may file objections to the claim of the Missouri Pacific against the debtor, New Orleans, Texas & Mexico, and participate in proceedings in that capacity.

We shall urge, before the conclusion of this argument, that that is a right that the applicant has, irrespective of and in addition to the right which the petitioner has in his capacity as a 5¼% bondholder, to file objections and to participate in those proceedings, and to take such steps as may be necessary, in that proceeding, for the purpose of protecting the 5¼% bondholders, and for the purpose of participating in proceedings in which one of the questions will be the determination of the validity of the Missouri Pacific claim against the N. O. T. & M., and, in the event that any part of it should be found valid, what the rank of that part may be.

They are two distinct, separate matters, although I agree that, with respect to a substantial portion of the matter, they move in the same orbit. There is still, however, an important distinction, and for that reason, with Your Honor's permission, we should like to continue with the prosecution of the special application which is on for this morning's hearing.

The Court: I do not quite understand what the distinction is. Why is it necessary to go through this twice?

Mr. Brandwen: I am not suggesting, if Your Honor please, that we go through the steps in the determination of the validity and the priority of the claim twice. I am perfectly ready to say that that shall be done only once. I am agreeable to that, of course, but I say that, with respect to the determination of the validity of the claim, that that is something that the petitioner here this morning has the right to prosecute in the name of the Trustee, and that if, for example, it is decided in the interest of expedition and the saving of time, with which I wholly concur, that there be only one proceeding for the purpose of determining that then, if it will be agreed by Mr. Kitchel that at the time the hearings come on, on January 8th, the petitioner will have the right to have the right then to file objections in the name of the Trustee and to proceed to oppose the claim in the name of the Trustee at that time, as fully as he could do now, that will be agreeable to us.

We are not asking that there be any duplication of proceedings, but we feel and believe that, on the basis of well-established authority of this very Circuit, the petitioner has the right to proceed here in the name of the Trustee.

The Court: What is your authority for that?

Mr. Brandwen: The principal authority on that is the case of Rosenbaum v. Dutton, and the exact citation of that is 203 Federal 838, Court of Appeals of the Eighth Circuit.

The Court: What is that?

Mr. Brandwen: 203 Federal 838, a decision of the Circuit Court of this circuit.

If Your Honor please, we are anxious to have the validity of the claim of the Missouri Pacific against the N. O. T. & M. judicially determined fully on the merits, and we do not want, by any procedural difficulty, to be precluded from that. That is why we assert again that we have that right here, and we also have the right, of course, under the

Bankruptcy Act, in connection with our filing of objections to the Plan.

May I, in the interest of saving time, state what the issue was in that case?

The Court: Yes.

Mr. Brandwen: In that case there was a large claim filed, among others. It was a case in which the trustees sought to impose an assessment on stockholders. An assessment would not have been rendered necessary if this large claim were not a valid claim, because there would have been enough otherwise to pay all the creditors. These two stockholders upon whom the assessment was imposed by the trustees objected to the claim. They said, "This claim is not valid, and if this claim is not found to be valid there will be no assessment on us." They tried to object to the claim and they were denied permission. The Circuit Court said no, they should have been given the right to proceed, in the name of the Trustee, to object to the claim, that that was a right that could not be taken away from them. They were interested, and the effect of the determination of the validity of that claim would have been very serious to them.

Here, so far as we are concerned, our interest is quite clear. If, for example, this claim of the Missouri Pacific is found to be invalid then it means that prior indebtedness, prior to the stock of the New Orleans, Texas & Mexico of seventeen million dollars, will be eliminated and the value of the collateral possessed by the 5¼% Bonds will be enhanced. So, there is a vital interest on their part.

In the Circuit Court of Appeals of this Circuit they allow that right even to stockholders, and in this case we have creditors. I suggest that, on the basis of that decision, that is a right that is a definite right granted to creditors in this proceeding, and I want to say that that right, which the Court of Appeals of this Circuit felt impelled to grant the stockholders in the Dutton case, to which I have just referred, is even greater in the present case, because in the present case we find ourselves confronted at the very outset with one cardinal, inescapable

fact, and that is this: We find a situation where the Missouri Pacific files a claim against the New Orleans, Texas & Mexico. Normally, there is a rigorous duty imposed on the trustee of an estate to scrutinize with the utmost severity any claim filed by a parent against a subsidiary. As a matter of fact, the Supreme Court of the United States has ruled that, in claims of that kind, claims filed by a parent against a subsidary, they are presumptively fraudulent.

In this case, we have [a] unusual situation. It is a fact that we have the same trustee in both companies, and it is just humanly impossible for Mr. Thompson, as Trustee of the New Orleans, Texas & Mexico, to file objections and prosecute them vigorously and thoroughly against a claim filed by a company of which he is also trustee. So that I say that certainly the authority of the Dutton case of this Circuit, is fortified—I should say almost infinitely—by the circumstances of this case. It is just impossible to ask Mr. Thompson, or to expect Mr. Thompson, and with respect to that I am not—

The Court: I can not agree with you on that. I can't see that—

Mr. Brandwen: If Your Honor please, that is one of our basic allegations, that it is a situation where it would just be futile to expect Mr. Thompson, as Trustee, to oppose himself in connection with a claim that he filed as Trustee of the Missouri Pacific.

Now, that is a basic position of ours. We don't have to rely on that at all, even if we did not have that situation. Under the Dutton case, we would have the right to file the objections in the name of the Trustee, but we say that this is an intensifying fact.

Mr. Kitchel: May I answer that part of the argument, or are you going ahead?

Mr. Brandwen: I am going ahead, if you don't mind, Mr. Kitchel, except that I would like, with Your Honor's permission, to ask what Mr. Kitchel would say with respect to the suggestion that I made earlier, in answer to

Mr. Kitchel's proposal, because, as I recall, there was no comment made by Mr. Kitchel on that.

Mr. Kitchel: May I have that statement?

(The statement referred to was read as follows: "I am not suggesting, if Your Honor please, that we go through the steps in the determination of the validity and the priority of the claim twice. I am perfectly ready to say that that shall be done only once. I am agreeable to that, of course, but I say that, with respect to the determination of the validity of the claim, that that is something that the petitioner here this morning has the right to prosecute in the name of the Trustee, and that if, for example, it is decided in the interest of expedition and the saving of time, with which I wholly concur, that there be only one proceeding for the purpose of determining that then, if it will be agreed by Mr. Kitchel that at the time the hearings come on, on January 8th, the petitioner will have the right to have the right then to file objections in the name of the Trustee and to proceed to oppose the claim in the name of the Trustee at that time, as fully as he could do now, that will be agreeable to us. We are not asking that there be any duplication of proceedings, but we feel and believe that, on the basis of well-established authority of this very Circuit, the petitioner has the right to proceed here in the name of the Trustee.")

Mr. Kitchel: Your Honor, I can not agree with that proposition. In the first place, this party has a right to be heard on this objection himself. There is no reason why he should do it in the name of the Trustee. The second reason is that I can not bind the Trustee by any agreement I should make. The third thing is—

The Court: The Trustee's counsel is here.

Mr. Kitchel: The third point, Your Honor, if I may interrupt you, is that, if this claim is to be contested by the Trustee I think he would be entitled to select his own counsel.

The Court: The Trustee has counsel here.

Mr. Dearmont: I would be glad to express the views, I think, of the Trustee in this matter, to the proposal of Mr. Brandwen. In the first place, I think the impossibility of carrying out the suggestion of Mr. Brandwen will readily appear here. If you will just look at this matter briefly, what will result? Mr. Brandwen comes in here representing a man who claims to be the holder of $80,000. par value of 5¼% Secured Serial Bonds, and to speak for some $900,000. additional, par value, I think. I will simply state that, by reason of that fact, by the terms of Section 77, he is given the absolute right, as is any other creditor of this estate, to come in and present his objections to the plan of reorganization proposed by the Interstate Commerce Commission. That right is given him by the Act.

In his petition he suggests that Mr. Thompson is Trustee of the New Orleans, Texas & Mexico and the Missouri Pacific, and, therefore, is in a position where he can not proceed to oppose this claim, and that, accordingly, he should be allowed the right to come in—not in his own name, although the Act specifically gives him a right to appear in the proceedings and prosecute this very matter and be heard on objections to the Plan—and be allowed to do it in the name of the Trustee. Now, assume that that is a reasonable request and that the case referred to by Mr. Brandwen grants him that authority—

The Court: I haven't had a chance to read it.

Mr. Dearmont: I have not read it, but from his statement I think I can point out why it is not pertinent here. But assume that that case does say that he has that right, then Your Honor is going to be faced the next day by somebody who is in favor of that claim and thinks it should be supported in behalf of the Missouri Pacific, of which Mr. Thompson is Trustee, and somebody else comes in and moves Your Honor to support this claim in the name of Guy Thompson. Then you will have Guy Thompson against Guy Thompson in this proceeding and the estate being milked on each side. It is just an anomalous situation.

The Court: Do you accept that, Mr. Brandwen?

Mr. Brandwen: Oh, no; I differ with my esteemed friend very much.

Mr. Dearmont: As far as this case is concerned, assuming Mr. Brandwen's statement is accurate, and I know he undertook to make an accurate statement, he said the parties had no right to proceed in this matter except in the name of the Trustee, and, accordingly, their right to offer objections was denied, and therefore they were permitted to proceed in the name of the Trustee.

It was not a Section 77 case; I assume it was possibly a 77B case, receivership suit.

I want to call attention to what this Act says, which I think obviates any necessity to grant this peculiar and unusual right to this individual bondholder of the Missouri Pacific to appear in the name of the Trustee. Section 77, sub-section 13, in part, reads as follows:

> "The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either of the trustee or trustees of any mortgage, deed of trust, or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings and on petition therefor and cause shown any such person or any other interested party may be permitted to intervene."

They ask for leave to intervene and to appear in the prosecution of this claim, or their defense to it, in the name of the Trustee. This man predicates his demand on the ground that he, as a creditor or stockholder or duly authorized committee, shall have the right to be heard on all questions arising in the proceeding. I say that, since he has, as any other creditor, a right to appear and be fully heard in his own right and in his own name, there is no showing that could possibly be made that authorizes this. So, there is no need, since this man is clothed in his own right with the power to come in and urge his objections to this claim, if he has any, why he should be granted authority to put the cloak of the Trustee on his shoulders and come in, in his name, to urge any defense against this

claim, and the Trustee would strongly urge Your Honor that any such authority be denied to this creditor, for that reason.

The Court: Mr. Homire.

Mr. Homire: Your Honor, it seems to me they are no more entitled to proceed in the name of the Trustee, representing the N. O. T. & M., than we would be entitled to demand that the Trustee allow the Reconstruction Finance Corporation to prosecute a claim on the other side, in behalf of the Missouri Pacific. It seems to me that they will have full opportunity, in their own name and in their own right, under the statute, to present all their case, to the extent that they have a case, at the time the objections to the Plan are heard.

I join in Mr. Kitchel's motion in that respect, that the petition be denied, without prejudice, at this time.

Mr. Brandwen: May I reply to the statements of counsel for the Trustee and of counsel for the Reconstruction Finance Corporation? I don't know whether it is clear, but I assume—and if I am incorrect counsel for the Trustee, please correct me—you were speaking before, in response to the Court's question, as counsel for the Trustee of the Missouri Pacific and counsel for the Trustee of the New Orleans, Texas & Mexico?

Mr. Dearmont: That is right; counsel for all the Debtors.

Mr. Brandwen: I just want to have that clear. I am not questioning in any way—on the contrary, I join with distinguished counsel in their statements that at the time of the hearing on the fairness of the Plan of Reorganization, which is set for January 8th, of course, any creditor, and we, as a creditor, will have the right to be heard on objections to the Plan. That right is a clear right given to the creditors and given to this petitioner, by the statute. There is no question about that, and I am not in any way differing with them on that point. So, let the record be as clear as it can possibly be, on that point.

I say, however, that that is a somewhat different problem from the problem that we are presenting to Your

Honor this morning. The problem that we are presenting to Your Honor this morning simply deals with a specific claim which has been filed, and now request, by reason of all of the facts which are enunciated in this petition, that we have a right, under the law and under the decided authorities, to file objections in the name of the Trustee, against that claim, and to participate in all steps necessary to determine whether that claim is valid.

The Court: You base that right on this Rosenbaum case?

Mr. Brandwen: And also on the section of the Act, under well-established principles.

The Court: The authority of Judge Trieber, in the Rosenbaum case?

Mr. Brandwen: Yes; that is the principal authority in this Circuit on that matter, and we say that under ordinary principles of law, of equity, of bankruptcy law, a creditor would have the right to file objections to any claim that is filed, in order to avoid—and this is the reason why the authorities say it must be done in the name of the Trustee—in order to avoid a multiplicity of objections of all [kind] of creditors, and in order to maintain a semblance of order, and in order to avoid chaos, the authorities have established the doctrine—

The Court: But you don't conceive that any party would have a right to proceed in the name of the Trustee in support of that?

Mr. Brandwen: There is no such authority. After all, the only time there would be any occasion, perhaps, for that doctrine—although I have not seen any case on that point—would be, if Your Honor please, if, for example, these distinguished gentlemen would say—and I am sure they are not saying it, but if they would say that the prosecution of the claim of the Missouri Pacific was not going to be handled competently, and they pointed that out to the Court and wanted the Court to assign someone to represent the Missouri Pacific, for the purpose of seeing that that claim was prosecuted properly. That would depend upon special facts and circumstances that per-

haps they might choose to make, but so far they have not made any, and in the circumstances, there would be no basis for the suggestion made by both Mr. Homire and Mr. Dearmont, that others might come in and seek to support the Missouri Pacific claim in the name of the Trustee.

We are adopting the most orthodox kind of procedure suggested by the authority, suggested by the Act, and suggested by this Circuit Court of Appeals, that, in order to avoid everybody doing something, that we get leave of Court to file these objections in the name of the Trustee, so that John Jones, Tom Smith, and somebody else may not do the very same thing, and then there would not be any orderly procedure. We say that that is a right that we have that is independent of anything that may be done with respect to the Plan of Reorganization.

Let us assume a purely hypothetical situation, which I have no reason to suppose would be the fact, but let us assume, for the moment, that the hearing does not go on, on January 8th, for any variety of reasons. This is still a matter that we have a right to have determined, because what we are dealing with here is the status of a very large claim. Under ordinary circumstances, what you have is a claimant who would say to the Court, "I have filed a claim for ten million dollars plus. I want to have this claim allowed". This claim has never been allowed. There has never been any order on the claim.

If a claim was filed in an estate, a trustee would say, "Here is a large claim. Maybe we ought to do something about it". Nothing has been done. We say, as far as the status of the claim is concerned, that has to be disposed of and it has to be disposed of irrespective of the Plan of Reorganization. Of course, when there is a Plan of Reorganization it is imperative that it be disposed of, but, as imperative as it is, it does not avoid the necessity of having the claim disposed of otherwise. It is a problem of what is to be done with respect to a claim, whether it is dealt with in the reorganization or whether it is not dealt with in the reorganization.

Now, if Your Honor please, I would like to summarize some of the more important allegations in the petition very, very briefly. Your Honor undoubtedly has a number

of these facts before him, but I think if I detail some additional facts it will help Your Honor in the consideration of it.

As Your Honor knows, there are a little over twelve million dollars of the 5¼% Secured Bonds outstanding. These bonds were issued by the Missouri Pacific. The security for these bonds consists of 121,460 shares of the common stock of the New Orleans, Texas & Mexico. That quantity of stock amounts to about eighty-two per cent. of the stock of the New Orleans, Texas & Mexico.

The Court: How much per cent.?

Mr. Brandwen: Eighty-two per cent. of the stock of the New Orleans, Texas & Mexico. So that, these bondholders are in a unique position, they have that secured by collateral, which is specific collateral, it is not in mortgage or in roadbed. They have a two-pronged right, one is as bondholders of the Missouri Pacific—they have, of course, a claim against the Missouri Pacific Estate, and, two, by virtue of their collateral they have this claim against the N. O. T. & M. through the eighty-two per cent. stock interest in the N. O. T. & M. Naturally, what they will get will depend, of course, on the value of the collateral, and the value of the collateral will be determined largely by what precedes the stock in the debt hierarchy of the New Orleans, Texas & Mexico, and if, for example, all that precedes the stock in the New Orleans, Texas & Mexico Railroad is simply the debt of the First Mortgage and Income bonds and a small amount of unsecured claims, the value of the stock then is an entirely different matter from the value of the stock if they are ahead of the claims of the First Mortgage and Income bonds and this inter-company claim, which now amounts, with accrued interest, to in excess of sixteen million dollars. It means that if this sixteen million dollar claim is either expunged completely, or is subordinated behind the stock, that there are sixteen million dollars or more of assets of the New Orleans, Texas & Mexico that are available to this collateral, that otherwise might not be available to this collateral. So far as the 5¼% bonds are concerned, this is a matter of vital interest.

The claim was filed for a little over ten million dollars. We say that the New Orleans, Texas & Mexico is not indebted to the Missouri Pacific in any way at all, because, we say that these advances from the Missouri Pacific to the N. O. T. & M. and, as they were described in Mr. Kitchel's brief, capital advances of a parent to a subsidiary—

(To Mr. Kitchel) Your brief of December, 1943.

We say that these advances were made solely for the benefit and purpose of the parent, and not for the benefit of the New Orleans, Texas & Mexico at all. We also say that these advances were in violation of the fiduciary obligations which the Missouri Pacific assumed with respect to these 5¼% bonds, in that they undertook not to do anything that might impair them in any way.

Now, briefly, the facts that we rely on in particular, which require the disallowance and expunging of this claim completely, are as follows: The Missouri Pacific, from 1925, controlled and dominated the New Orleans, Texas & Mexico. It owned most of the stock, about ninety-four per cent. of the stock, and it had its own officers and directors running the N. O. T. & M., and during that period the Missouri Pacific caused the New Orleans, Texas & Mexico to pay a little over six million dollars in dividends, although during that period the N. O. T. & M. really had no earnings. As a matter of fact, there was a deficit. Still, the Missouri Pacific caused the N. O. T. & M. to pay over six million dollars of dividends. The N. O. T. & M. did not have the earnings or cash to justify this. The income figures were overstated, accruals for depreciation were understated, maintenance was postponed, and road and equipment were allowed to deteriorate. The N. O. T. & M. did not have the earnings or the cash, still there were demands made by the Missouri Pacific—"We will give you twenty-five thousand dollars for dividends", and the N. O. T. & M., the next day, would make a bookkeeping entry paying the same dividend to the Missouri Pacific. That thing went right on—

The Court: I have had so many of these proceedings that it is difficult to keep the various matters in mind.

This matter has been up before, and has been considered by the Interstate Commerce Commission?

Mr. Brandwen: No. I will tell you what happened. If the Court please, there was some reference—

The Court: The matter was before this Court before, was it not?

Mr. Brandwen: In a petition submitted by Doctor Foley. I want to say this, that there were references before the Interstate Commerce Commission on the advances. Some of these things that I have just referred to were discussed before the Interstate Commerce Commission. I will say this, that the question of the validity and the full scope of this problem was not considered by the Interstate Commerce Commission.

The Court: The question of validity never was raised?

Mr. Brandwen: The validity was never raised. There were certain problems at one time. Before the 1940 Plan was being considered there were certain disputes between the New Orleans, Texas & Mexico Committee, the First Mortgage Bond Committee, and the Missouri Pacific First and Refunding Committee, as to the respective contributions of the two roads to the whole picture, and in order to determine what the N. O. T. & M. was receiving was fair, a number of these things were gone into, and I repeat just as emphatically as I know how, never were these matters before the Interstate Commerce Commission for the purpose of determining the validity or the rank of this claim, and the most conclusive answer to all that is that the Interstate Commerce Commission, in the very report on the plan which it certified to Your Honor, said expressly that it just assumed the validity, without passing on it, of this claim, and at the hearing before this report was handed down by the Interstate Commerce Commission, the Interstate Commerce Commission said, "If you have any question about this claim you go to the Court about that". Those are the very words of the Interstate Commerce Commission with respect to it. They never proceeded to pass on the validity, and the Interstate Com-

merce Commission was quite right in not proceeding to pass on the validity of it, because that is a function, under the Western Pacific case, in the Supreme Court—

The Court: This is the first time you have raised this, and this is the third time this matter has been before the Court?

Mr. Brandwen: This very matter? The first plan was before the Court in 1940.

The Court: And came back when?

Mr. Brandwen: After the Plan was considered by Your Honor it went to the Circuit Court of Appeals. The Circuit Court of Appeals considered that until July, 1943. Your Honor may recall that, in March, 1943, the Supreme Court decided the Milwaukee and Western Pacific cases, and the Circuit Court of Appeals, although having heard arguments, wanted counsel to submit their further briefs stating to the Court what their interpretation might be of the decision of the Supreme Court. Then there was an agreement, apparently, among counsel, that it should be returned by the Circuit Court of Appeals, and Your Honor sent it on to the Commission for reconsideration and for such action as might be appropriate in all the circumstances. Your Honor wrote an opinion in connection with the remanding of it to the Commission. So far as this Court is concerned, this was not raised in the 1940 plan. The second plan is about to be heard by Your Honor and it is coming up in January.

Now, I should like to say this, that the fullest disclosure of what took place between the Missouri Pacific and the New Orleans, Texas & Mexico was made by the United States Senate Sub-Committee on interstate commerce. This Senate Committee conducted investigations into various practices of various railroads, and on July 25, 1940, which was several months after the first plan had been certified by the Commission to this Court, they issued a pamphlet in which they summarized a good number of these things, and which appear more fully in a more elaborate volume, but that was not published until July 25, 1940. In the United States Senate Report a good

number of these facts are disclosed. As I say, that was published after the first plan was promulgated by the Commission. The Senate Report stated these transactions in considerable detail, showing how the books were fixed up to understate depreciation, overstate income, and annexed a series of letters, a number of these letters being annexed to this petition, which letters show how they acted with respect to dividends. Some of them were either sent to Mr. Baldwin, or by Mr. Baldwin, dealing with the problem of how vital it was that dividends be paid at all costs, and they present some very interesting commentaries. As I say, thirty-three of these letters are annexed to this petition.

I should like, with Your Honor's permission, to read just a little—

Mr. Kitchel: Your Honor, this is not the best evidence. I object to reading any of the testimony in this case.

Mr. Brandwen: If Your Honor please, this is argument that I am engaging in now, so that Your Honor can have a fuller picture.

The Court: I don't see how that would be of any assistance to the Court until the Court determines whether or not you should have leave to proceed in the name of the Trustee.

Mr. Homire: You, of course, understand that these advances which the Missouri Pacific made to the N. O. T. & M. have been pledged to the Reconstruction Finance Corporation, which is the holder in good faith, as pledgee, without any notice of any [——] whatever in those advances.

The notes were passed upon by the Interstate Commerce Commission in a Section 21a proceeding, under the Interstate Commerce Act. Throughout all of the petitions which have been filed, in which Mr. Brandwen or Mr. Biggs have participated, there has never been any statement of their position with respect to the pledge of those notes to the RFC. I think they ought to be required to state what their position is, and I think this will be a very opportune time.

Mr. Brandwen: I was going to come to the Reconstruction Finance Corporation later, Mr. Homire.

Mr. Homire: I didn't want you to overlook it.

Mr. Brandwen: I am going to come to the RFC. and deal with that problem fully.

Mr. Homire: I hope you will.

Mr. Brandwen: Now, if Your Honor please, all this that I have just been discussing, this reference to the Senate Sub-Committee Report, is done only for the purpose of giving Your Honor an idea of the enormity of some of the practices that were engaged in by the Missouri Pacific with respect to the N. O. T. & M., prior to the institution of these proceedings.

The Court: What has that to do with the question before us, whether or not you will be permitted to intervene?

Mr. Brandwen: I want Your Honor to be satisfied that we are dealing with a matter of substance. If Your Honor is satisfied that this is a matter of such substance that we don't have to go into it more fully, I am perfectly willing, with respect to that, to stop at this point, so far as the substance of it is concerned. I will be guided entirely by Your Honor's wishes on that, because they are fully set forth in this petition, and they are there.

I want to say this: The claim that has been filed by the Missouri Pacific against the New Orleans, Texas & Mexico has never been allowed by an order of this Court.

Judge Faris, when he issued the order providing for the filing of claims, required that objections, if any, be filed with the Special Master whom he had appointed, "within such time and with such particularity as the Master in his discretion may prescribe", but neither the Court nor the Master ever designated the time or the particularity within, or whereby, objections to claims were to be filed.

As Your Honor knows, the Master died and there was no Master appointed to succeed him. As a matter of fact, there are still some claims that are not disposed of, and Your Honor is fully aware that claims arising out of the

disaffirmance of contracts have not been fully disposed of, because the time within which the Trustee may elect to disaffirm has not expired, unless it expired in October, 1944, because that was the last order I know of. Perhaps there was an order entered subsequent to October, 1944, which still gives the Trustee time to disaffirm contracts.

Your Honor is, of course, aware of the provision of the Bankruptcy Act, Section 48 (a), which charges the Trustee with the duty of examining all proofs of claims with particular rigor and comprehensiveness. The Supreme Court has ruled that claims filed by a parent against a subsidiary are presumptively fraudulent.

The Trustee of the New Orleans, Texas & Mexico has never filed any objections to the claim filed by the Missouri Pacific, has never taken any action to expunge the claim, and no hearing was ever ordered on this claim at any time.

As I say, we never asked the Trustee to file objections, because of the point I made before, which Your Honor does not regard with the same seriousness as I do, of the conflict of position in which the Trustee finds himself. I don't want to belabor this point, in view of Your Honor's expression of opinion, but if Your Honor will bear with me, it seems to me that it is the kind of thing that Courts from time immemorial have tried to guard against with the utmost circumspection and meticulousness, because it is contrary to human psychology for a man who, on one hand, files a claim against himself as trustee of another company, and then tries to determine whether the claim should be prosecuted vigorously, or whether the objection should be prosecuted vigorously, particularly, if Your Honor please, in view of these findings of the Senate Sub-Committee, in view of the charges that have been made with respect to what has been done by the Missouri Pacific with respect to the New Orleans, Texas & Mexico prior to the institution of these proceedings.

May I point out the difference between the position of the Court and the position of the Trustee in this respect?

The Court: Yes.

Mr. Brandwen: The Court, when it passes on matters has—I was about to say the benefit, sometimes the bur-

den—of argument of proponents and opponents, and opponents will present their case with the most effective—

The Court: Of course, there is that distinction.

Mr. Brandwen: There is that distinction, and that is something that does not apply with respect to the Trustee. After all, a trustee of an estate must represent all the interests in that estate with the utmost impartiality, what is for the best interests of the estate as a whole. He must not prefer one group in the estate over another group, if he has to jump over the line and jump into another company where the interests of that other company are radically different from those of the first estate, when he is asserting a claim of one estate against another. When a claim is already filed he is taking a definite position.

Again, I say that I should assume, if I were in Mr. Thompson's position—this may be presumptuous in me to say—that I should not want to really be in between here, attempting to deal with myself as the asserter of the claim, on the one hand, and as an objector to the claim on the other hand, becauuse there never can be, it seems to me—and, again, I say this with the utmost respect—there never can be anything done under those circumstances which could satisfy a Court, in view of the history here, the seriousness of the charges—

The Court: There may be some difference * * *

Mr. Brandwen: If Your Honor please, this was referred to once before. Petitions were filed by the First Mortgage Bond Committee of the New Orleans, Texas & Mexico, the so-called Walker Committee, and the Irving Trust Company, as trustee of the First Mortgage bond issue, raising only some of these questions. I made it my task to examine the record, and in that case there was a question raised as to whether Mr. Thompson could act as trustee for both estates.

The Court: I think there was a motion filed.

Mr. Brandwen: Yes, there were, and there was some question as to what happened. I examined the record, and Your Honor, I find, entered an order continuing the hear-

ing on those motions indefinitely, providing in the order that they could be re-docketed at any time for hearing, on thirty days' notice, and nothing has been done since then. Now I say that most of the proof with respect to matters contained in this petition consists largely of documentary material which documentary material is available to the company, in possession of the company and the Trustee.

I do not want to say this that, for example, in dealing with related matters, in this very proceeding, Judge Faris said:

> "For to me it is plain that the Congress intended to stop a practice among railroads and their exploiters and manipulators which has had much to do with making the financial history of railroads the most indecent and sordid chapter ever written in this or any other nation."

That is what Judge Faris had occasion to say in this very proceeding.

Since we submitted this petition there was an answer filed by the Reconstruction Finance Corporation and the Institutional Group of Bondholders. I shall not deal with all these matters again. When this answer refers to the fact that this petition fails to follow the requirements of Rule 23 (b) of the Rules of Civil Procedure, I don't think, in dealing with the filing of objections to a claim—and that is what we have before us—Rule 23 (b), which deals with class actions and stockholders' suits, is at all applicable or pertinent.

I say the time to file objections has not expired at all. There never was any order with respect to the time within which objections had to be filed. Then they say that we are now seeking to litigate *de novo* issues that have heretofore been fully explored by the Commission, after the Commission itself has said, "Take this up in Court."

Again, I say, until a claim has been allowed—

The Court: They don't say anything more?

Mr. Brandwen: The Commission doesn't deal with that question at all, oh, no.

Now, I say that until a claim is allowed objections may

be filed at any time before the closing of the estate. Even after it is allowed reconsideration may be had of it. This claim has never been allowed here, and in the circumstances, of course, objections may be filed at any time.

There is one argument that is made in the Fifth Defense, that is a curious kind of thing. I read it a number of times. They say that although our interests may have been injured by a violation of a pledge then we, who have been injured, are charged with unclean hands—because the Missouri Pacific has done these things to the N. O. T. & M., in view of the fact that we are bondholders of the Missouri Pacific, we come into Court with unclean hands.

(Here ensued brief colloquy between the Court and counsel.)

Mr. Brandwen: After all, we have been injured. The Missouri Pacific has done certain things to hurt our collateral. We come in here and want to get restitution, we want this injury undone, as far as legally possible and appropriate, and we are charged with coming into Court with unclean hands, because the Missouri Pacific itself did these things to the New Orleans, Texas & Mexico during all those years.

Now with respect to the Reconstruction Finance Corporation: I should like to state certain factual material that I don't think there will be any dispute on. The claim filed by the Missouri Pacific against the N. O. T. & M. amounts to $10,565,000. That claim is based on purported advancements made by the Missouri Pacific to the N. O. T. & M. from—according to the claim as filed—March, 1929, to the date of the institution of these proceedings.

The Court: March 29, when?

Mr. Brandwen: March, 1929. For these advances two notes were issued. One was issued in January, 1933, of seven odd million dollars, and one of in excess of two million dollars, representing these alleged advances, issued on February 28, 1933. These two notes, according to the RFC., were pledged with the RFC. by the Missouri Pacific. These two notes were issued by the N. O. T. & M. to the Missouri Pacific.

The first thing we want to have clear, if Your Honor please, is that at least $600,000. of these alleged advances were not covered by notes that were purportedly pledged to the RFC., so that, with respect to that amount, the RFC. has no notes, and that amount, together with interest alone, amounts at present to in excess of one million dollars.

The second note, of over two million dollars, according to Mr. Homire, never received specific approval by the Interstate Commerce Commission; only the first note received specific approval, Mr. Homire said. I am not making any point of saying the second note did not [——] to receive specific approval—

Mr. Homire: When you say I said, you are not talking about our Answer, but are reading from our brief which was filed before the Commission?

Mr. Brandwen: Yes. I am stating a fact, and I assume a fact assumes a fact, whether it is stated in an answer or in a brief.

Mr. Homire: I want to know just what you are talking about.

Mr. Brandwen: You mean, you want to be clear as to where it comes from?

Mr. Homire: Yes.

Mr. Brandwen: So that one thing is clear, the amount of the claim filed by the Missouri Pacific against the N. O. T. & M. is different from the notes which the RFC. claims were pledged by the Missouri Pacific to the RFC.

Secondly, in this matter we are not attempting to do anything so far as the RFC. is concerned, that is to say, if we are correct in our statement that the Missouri Pacific claim is not valid against the N. O. T. & M., that is an issue entirely distinct and different from what the rights of the RFC. may be, either with respect to the Missouri Pacific or with respect to the N. O. T. & M. They are two distinct matters; that is to say, I, as a maker, may be induced by fraud to give a note to a payee. The payee may negotiate that note, let us assume, to a third

person, who is a holder in good faith for value, without notice. There is no doctrine of law which precludes me, as the maker, from bringing an action against this payee for such relief as is appropriate by reason of the fraud practiced by the payee on the maker. No third person can ever prevent or bar that action being brought. If the payee does something that he, in all good conscience should not have done, then if, for example, the holder has to sue on that note, that presents quite another problem. We don't have to deal with that now. All we are dealing with now is purely the relationship between the maker and the payee, and nothing else, and I don't see how the RFC. is concerned with this in any way at all.

The RFC. says, in its Sixth Defense, as follows:

> "said matters and things are without effect in relation to RFC and said notes in the hands of RFC or its assigns constitutes the valid, legal and binding obligations of the New Orleans to the extent required to satisfy RFC's loans as aforesaid."

Now, if, as I agree, said matters and things are without effect in relation to RFC., I don't see what RFC. is concerned about. I don't see how they are involved. I accept this language in their Answer, and I think they are right. They just say this is a matter without effect upon them. I agree with them.

Secondly, they say that the notes—and again, I want to say the notes do not represent all the advances purportedly made by Missouri Pacific to N. O. T. & M.—they say the notes in the hands of RFC. constitute a valid, legal and binding obligation of the New Orleans to the extent required to satisfy RFC's loans.

It would be very interesting to note that I made an analysis of the collateral that RFC. has outside of these nine million dollars of demand notes, and I attempted to get the market value of the collateral which they have. As of last night's close, the market value of these securities, the First and Refunding 5's, which they have, the Convertible 5½'s, the N. O. T. & M., International-Great Northern Adjustments, the Texas-Pacific Company, the Prescott Bonds, the Denver & Rio Grande, the Fort Worth

Stock, and the American Refrigerator Stock, had a value last night of $29,608,000. The RFC. claim is $23,134,000. Under the terms of the Plan they are to get cash settlement for interest of $5,329,242. So, their total claim, according to the Plan—and I am not questioning their right to receive that, not at all—is $28,463,242. In other words, they have collateral, without dealing with these notes in any way at all, or even without dealing with the $1,900,000. First Mortgage bonds of the N. O. T. & M.—they have collateral that has a value of $1,144,000. in excess of their claim, principal, plus the amount that has been agreed upon under the Plan as settlement for interest, and that does not include the excess amount of interest which has been paid in recent payments made in 1943 and 1944, on the First and Refunding 5's, which the RFC has.

So, I would say, based on last night's quotations—and I am not saying these quotations are conclusive; the RFC., in a brief, stated the market values are lower than the real value of collateral, but taking the market value as of last night, I would say the collateral the RFC has is in excess probably as high as two million dollars above the principal plus the amount of interest which has been agreed upon in the Plan, and that is without touching these notes and without touching the $1,900,000. of these First Mortgage bonds of the N. O. T. & M.

Then, under these circumstances, so far as the RFC is concerned, frankly, I don't see why they are concerned. Nobody wants to take away from them what they want to get under the Plan. So far as we are concerned, there is no reason why they should not be paid everything in full, plus the amount of interest as agreed upon. We go for it. But there is no reason why, when they have all this valuable collateral, they should be bothered about something that is purely an internal matter of a claim filed by the Missouri Pacific again the N. O. T. & M. We say we are vitally affected and they are not vitally affected, and there is no reason why we should not be permitted to have the matter determined. We say there is also the doctrine of marshalling—if there is not enough received from the other collateral, if there is any question about that, then

you may have something to complain of, and that is recognized by the Answer of the RFC, when they say it is a binding obligation "to the extent required to satisfy RFC's claim as aforesaid." So that, it would seem to me, as far as the RFC is concerned, its position is nothing to give it any concern at all, and the fact that the Court would order a marshalling in such a situation has been a doctrine recognized and hallowed by centuries of chancery decisions. Probably the latest one is the decision of the Supreme Court in the Milwaukee case.

There was one point made—I don't know whether it was made very seriously or not—but one point was made with respect to expenses. The Courts have had occasion to pass on that time and again. Those matters of expense are always within the control of the Court and, certainly, when justice and equity require the expunging of a claim on the merits, it seems to me, if Your Honor please, that everything must be done by the Court to enable a claim of that kind to be judicially determined on its merits, in the most effective fashion.

Mr. Kitchel: May it please the Court: Your Honor asked whether this question of the claim of the Missouri Pacific against the N. O. T. & M. had been a matter of consideration before the Interstate Commerce Commission. There was any amount of evidence offered, one way and another, on this claim. At the hearing in July, on the petition filed by Mr. Foley, I read into the record portions of the transcript of the hearing before the Interstate Commerce Commission, in which this matter had been dealt with. I do not think it is necessary to do it again.

Let me say first, that the claim is based on the fact that the books of the N. O. T. & M. were doctored, that they did not show the real situation, because depreciation was not taken as it should have been, that there were certain purchases of locomotives by the N. O. T. & M. for the benefit of the Missouri Pacific, and that traffic had been diverted from the N. O. T. & M. unjustly, and things of that kind. Those are the facts which they are relying upon, according to their petition now, in order to establish the invalidity of this claim.

Before the Interstate Commerce Commission, in 1936, 1937 or 1938, Mr. Safford testified as to car hire; Mr. Ballentine testified at length in regard to this locomotive problem that has been referred to; Mr. Trobaugh also testified in regard to car hire; Mr. Scruggs testified as to the diversion of traffic, to the rate division, to the shrinking of the earnings, and Mr. Wyer testified at length as to these advances, explained why they were made, and as to the relations between the companies, and the matter certainly was brought to the attention of the Commission. If the facts that were up before the Commission were not sufficiently developed at that time, it was then open for somebody to do it, without waiting until eleven years thereafter.

Counsel has stated, correctly, that in the Report of the Commission, under date of July 4th, last, they assumed that this claim was valid. I should like to read just what they did say.

The Court: I have a curiosity to hear what the language was.

Mr. Kitchel (reading):

> "Although more than twelve years have elapsed since the Missouri Pacific made its advances of cash to the New Orleans, as above stated, the invalidity of any part of these advances has never been established and we will assume for the purposes of this proceeding that they are valid obligations of the New Orleans in determining the right of and the extent to which holders of Missouri Pacific 5¼% and the New Orleans stockholders should participate in the plan of reorganization."

Prior to that there is considerable discussion as to the evidence that was introduced in regard to those matters. The fact is that their statement "we will assume for the purposes of this proceeding" follows the statement that, although more than twelve years have elapsed, the claim has not been pronounced as invalid.

This is an important matter, Your Honor. There is no doubt that, if this claim were pronounced as invalid it

would change the allocations that have been made. There is no doubt about that. But the question now before Your Honor, as far as I can make out, as the sole question, is whether this client of my friend can pursue this subject in the name of the Trustee. After listening very carefully to the argument already made, I have not yet been able to ascertain how Mr. Comstock, having the right to himself object and contest the validity of this claim, will be any better off by dragging in the name of the Trustee.

The argument has been made that, in bankruptcy practice and in equity, perhaps, that objections of this kind should be made by the Trustee, so as to prevent a multiplicity of objections by a number of people.

The Court: I think in this Rosenbaum case it says:

(The Court here read excerpts from the Rosenbaum case.)

Mr. Kitchel: I have not read the case.

Mr. Brandwen: It does not matter. It seems to me that if they were the only parties, as a matter of fact there would be even less occasion to require them to file in the name of the Trustee, because there would be no multiplicity, but in order to enable them to have control of that the Court felt that was the safer thing to do.

The point is this, that we are concerned as to whether, as a matter of law and dealing only with this one question, namely, the question of filing objections to the claim and not dealing, for the moment, with the question of filing objections to the plan of reorganization, because I regard those two questions as legally distinct—I recognize that there is an area where they merge, but they are legally distinct questions. I say this, if Your Honor please, perhaps it may be that Comstock as petitioner would be entitled to file these objections and call for a hearing on this claim, quite apart from the Plan of Reorganization, in his own name. All I can say is that, reading the cases and the authorities, the better doctrine, the safer doctrine, is that you must do it in the name of the Trustee. Frankly, in any further proceeding in this matter, we don't want to be met by the statement that "What

you should have done was to ask leave to file objections in the name of the Trustee".

Mr. Kitchel: Reverting again to the question of multiplicity of objections: If, in this particular case, Mr. Comstock should pursue this matter in the name of the Trustee, that is not going to prevent Mr. John Jones or Mr. Tom Smith from coming in and filing objections also. Every party in interest has a right to be heard on this. That may be the distinction which was raised in the case that Your Honor has read. I haven't read that.

From what was just said by opposing counsel, it seems to be the idea that there are two ways of attacking this claim, one, by pursuing the objections to the claim filed before the Special Master, and the other in regard to objections to the Plan. I can not see any economy in the time of this Court by allowing this proceeding to be split into two parts and having a hearing before the Special Master on one hand, and a hearing on the same identical proposition, raised by the objection already filed by his client, on the hearing of the Plan.

Now, can it be that they need the Trustee's name in order to get the information necessary to pursue this claim? I have no doubt that the Trustee would give access to anything justly called for, but there is filed here a petition and exhibits of some sixty pages. They seem to be pretty well supplied with all the facts that they need to develop this thing. I see no reason on earth why Mr. Comstock should not be compelled, if he wants to contest the validity of this claim, to do it pursuant to the objections which he has filed, at the hearing on January 8th, instead of wasting the time of this Court by starting a new proceeding.

I move that the petition be dismissed on those grounds.

The Court: Are there any other parties who desire to be heard?

Mr. Chasnoff: I am associated with Mr. Kitchel, but I was asked by Mr. Mayner Wallace, who had to be out of the city to attend an important meeting in Chicago, to make this statement to the Court as the position of the

N. O. T. & M. Committee. I will read the statement that he gave me.

(Reading):

"December 1, 1944.

"The Position of the N. O. T. & M. Committee on the Hearing of the Comstock Petition for Authority to Act on Behalf of the N. O. T. & M. Trustee in Opposing the Missouri Pacific Against the N. O. T. & M.

1. That as representing the bondholders we have no interest in the question of the validity or invalidity of the claim which is, in any event, junior to our bonds;

2. That we agree that the validity of the claim must be passed on by the Court in connection with its consideration of the Reorganization Plan;

3. That in order to expedite the consummation of the Plan we believe that the Court should take testimony and hear arguments on the validity of the claim at the hearing set for January 8; and

4. That we see no reason why the claim should be passed on by a Special Master in a separate proceeding or why Comstock should be authorized to take any special position in opposing the claim except in so far as he may care to present evidence or argument before the Court.

LEONARD D. ADKINS,
S. MAYNER WALLACE,
Counsel for N. O. T. & M. Committee."

Mr. Homire: I should like to join in Mr. Kitchel's motion, if Your Honor please. It seems to me that whatever right they may have—and I don't know what the Rosenbaum case holds, (because I haven't seen it—I think it was undoubtedly decided prior to the enactment of Section 77—

The Court: Oh, yes; it was decided in 1913.

Mr. Homire: Section 77 gives this creditor here the right to proceed in his own name, and any reasons that might

have been advanced to support the decision in that case certainly are no longer applicable, or, at least, they are not persuasive here, where the statute itself gives Comstock the right to present his objections in his own name. As has already been pointed out, their objections to the Plan embrace precisely the same questions—attack on these advances and the relationship between the Missouri Pacific and the N. O. T. & M., and it may very well be—I think it would most necessarily follow—that if they present their objections properly, by competent evidence, at the hearing on the objections on January 8th, in all probability any claim based on the pending petition would become entirely moot. We feel, therefore, that this petition ought to be denied, without prejudice.

The Court: Would you like to be heard further?

Mr. Brandwen: No; all I want to say is that it surprises me a great deal that objections to my petition were made by counsel for the Institutional Group and counsel for the RFC., inasmuch as I can not see how anything that is sought in this petition would impinge on their rights.

The Court: The motion to dismiss will be sustained and the petition will be dismissed without prejudice.

Which was all of the proceedings had on the hearing.

Order Denying Petition of Andrew W. Comstock for Leave to Intervene and in the Name of Guy A. Thompson, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor to File Objections to the Claim of Missouri Pacific Railroad Company, Debtor Against Said Debtor.

(Filed December 26, 1944.)

Order No. 2683.

On the 1st day of December, 1944 there having come on to be heard the petition of Andrew W. Comstock for leave to intervene specially in the above entitled proceed-

ings and in the name of Guy A. Thompson, as Trustee of the New Orleans, Texas & Mexico Railway Company, Debtor, file objections to the claim of the Missouri Pacific Railroad Company, Debtor, against the New Orleans, Texas & Mexico Railway Company, Debtor, heretofore filed here; to participate in any and all proceedings whether before a special master to be designated by the Court, or before the Court, wherein the validity or sufficiency of said claim is or may be involved, and to take any and all action, including any and all proceedings by way of appeal, necessary or proper to establish said objections whether before a special master to be designated by the Court, before the Court, or before any appellate court, and the Court having considered said petition, the answer of the Reconstruction Finance Corporation and the group of institutional holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds, and the arguments of counsel, and it appearing to the Court that the objections to the claim of Missouri Pacific Railroad Company, Debtor against New Orleans, Texas & Mexico Railway Company, Debtor, as set forth in said petition, have also been set forth by said petitioner in his objections to the Plan of Reorganization of debtor railroads, approved by the Interstate Commerce Commission and now set for hearing before the Court on January 8, 1945, and the Court being fully advised in the premises:

It Is Ordered that said petition of Andrew W. Comstock be and the same is hereby denied, without prejudice.

GEO. H. MOORE,
United States District Judge.

Dated: December 6th, 1944.

(Memorandum relating to Appearances of Parties and Docket Entries at hearings held on January 8, 1945 and thereafter by District Court with respect to Objections to Plan of Reorganization)

Appearances of Parties and Docket Entries at the hearings held on January 8, 1945 and thereafter by the District Court with respect to objections to the Plan of Reorganization of Missouri Pacific Railroad Company:

The following appearances were made:

W. Lloyd Kitchel
C. W. McConaughy and
Jacob Chasnoff
Attorneys for Group of Institutional Investors First and Refunding Mortgage Bonds.

Shearman & Sterling,
By Sanford H. W. Freund,
Attorneys for Bondholders' Protective Committee, General Mortgage Four Percent Gold Bonds.

Marion B. Pierce and
Allen Oliver
Attorneys for Debtor.

James L. Homire
Emmet McCarrery and
John Raeburn Green
Attorneys for Reconstruction Finance Corporation.

Richard I. Gottlieb
Attorney for Committee of Holders of Preferred Stock.

Luther L. Walter
Attorney for Protective Committee for Common Stockholders of Missouri Pacific.

Everett Paul Griffin
Edward F. Calladay and
Kenneth McEwen
Attorneys for Protective Committee First Mortgage Bonds International Great Northern.

Thomas W. White and
William Sleator
Attorneys for Irving Trust Company; N. O. T. & M. Bond-

holders' Committee and Bankers Trust Company, as Trustee; Central Hanover Bank & Trust Company, Trustee for Central Branch Union Pacific Mortgage and St. Louis, Iron Mountain.

James E. Garstang
Attorney for Chemical Bank & Trust Company, Trustee under Trust Indenture of December 1, 1926.

Donovan, Leisure, Newton & Lumbard,
By Mr. George S. Leisure and
Mr. Davis Teitelbaum,
Attorneys for Alleghany Corporation.

Robert H. McRoberts
Attorney for St. Louis Union Trust Company, Trustee for Committee for Protection of Little Rock, Hot Springs and Western Bonds.

Harry Kirshbaum and
Edwin J. Bean
Attorneys for Convertible Bondholders' Group.

Hugh L. M. Cole,
Attorney for City Bank Farmers Trust Company, Trustee International-Great Northern First Mortgage.

Wright, Gordon, Zachry, Parlin & Cahill,
By Mr. Robert M. Becket
Attorneys for Chemical Bank & Trust Company, Trustee of Secured Serial 5¼% Bonds.

S. Mayner Wallace
Attorney for New Orleans, Texas and Mexico Bondholders' Committee.

Blaney, Barrett, Bedal & Fairfield,
By Jesse W. Barrett
Attorneys for John M. Balliet, Intervenor

Maxwell Brandwen and
William H. Biggs,
Attorneys for Andrew W. Comstock.

Russell L. Dearmont and
Thomas T. Railey
Attorneys for Trustee.

A portion of the Minutes of the Clerk of the United States District Court pertaining to the Hearings on January 8, 1945 and thereafter on objections to Plan of Reorganization of Missouri Pacific Railroad Company follows:

1945

Jan. 8 Proof of notice to parties in interest of hearing this day etc. together with affidavits (13) as to publication of notice of such hearing, etc. filed by Trustee of debtor.

Jan. 8 Hearing on objections to plan of reorganization as approved by the ICC and on claims for equitable treatment thereunder commenced, but not being concluded at the hour of adjournment, further proceedings thereon postponed until tomorrow at ten A. M.

Jan. 9 Hearing on objections to proposed plan of reorganization as heretofore approved and certified by the ICC, and on claims for equitable treatment thereunder resumed. Affidavit of C. L. Peckham in support thereof and motion of Alleghany Corporation to expunge and dismiss objections numbered 2 to 33 incl., in schedule of objections to plan of reorganization of debtor filed by Andrew W. Comstock pursuant to order dated Nov. 31, 1944, filed and said motion argued, submitted and the ruling of the Court thereon reserved.

Jan. 9 Oral motion of Andrew W. Comstock that hearing on the claim of Missouri Pacific Railroad Company against NOTM Ry Co. be treated as a separate hearing and that the Court make separate findings of fact and conclusions of law and separate order thereon, made, argued, submitted and overruled; to which ruling of the Court movant asks and is granted an exception.

Jan. 9 Oral motion of Andrew W. Comstock for direction by the Court to the Trustee of NOT&M Ry. Co. to file objections to the proof of claim filed

by Mo. Pac. Rd. Co. dated Aug. 28, 1933 asserted against NOT&M Ry. Co., made, argued, submitted and overruled; to which ruling of the Court movant asks, and is granted an exception.

Jan. 9 Oral motion of Andrew W. Comstock for permission in the name of the Trustee of NOT&M Ry Co. to object to and contest the claim filed by Mo. Pac. Rd Co against NOT&M Ry Co. made, argued, submited and overruled; to which ruling of the Court movant asks and is granted an exception.

Jan. 9 Oral motion of Andrew W. Comstock that claimant Mo. Pac Rd Co. be required to go forward with the presentation of evidence in support of its claim asserted against NOT&M Ry Co made, argued, submitted and overruled to which ruling of the Court movant asks and is granted an exception.

Jan. 9 Oral motion of Andrew W. Comstock that the claim filed by Mo. Pac Rd Co. on August 24th, 1933 against NOT&M Ry Co be dismissed and disallowed made, argued, submitted and overruled; to which ruling of the Court movant asks and is granted an exception.

Jan. 9 Aforesaid hearing on objections to and claims for equitable treatment under plan of reorganization approved and certified to the Court by the ICC not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a. m.

Jan. 10 Hearing on objections to plan of reorganization heretofore approved and certified to the Court by the ICC and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a. m.

Jan. 11 Hearing on objections to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a. m.

Jan. 12 Hearing on exceptions to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings thereon postponed until Monday next at ten a. m.

Jan. 15 Hearing on objections to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment further proceedings on such hearing postponed until tomorrow at ten a. m.

Jan. 16 Hearing on objections to plan of reorganization heretofore approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a. m.

Jan. 17 Hearing on objections to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a. m.

Jan. 17 On oral motion of counsel for the Reconstruction Finance Corporation, order as to procedure on hearing on objections to plan of reorganization and claims for equitable treatment based thereon, filed.

Jan. 18 Hearing on objections to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a. m.

Jan. 19 Hearing on objections to plan of reorganization as approved and certified to the Court [to] the ICC, and on claims for equitable treatment thereunder, resumed.

Jan. 19 Oral motion of Harry Kirshbaum, attorney for Convertible Bondholders Group, to dismiss Comstock objections 1, 2, 3, 4, 5, 6, 7, 8, 13, 19 and 26 made, argued and submitted.

Jan. 19 Oral motion of W. Lloyd Kitchel, attorney for Group of Institutional Holders of Missouri Pacific Rd. Co. first and refunding bonds, that entire record of proceedings be considered a part of the record on hearing of objections etc. made, argued, submitted and sustained. Separate oral motion of W. Lloyd Kitchel, attorney for Group of Institutional Holders etc., to strike all evidence and testimony adduced on [Constock] Objection No. 19 and related objections made, argued and submitted. Oral motion of aforesaid movant to overrule Comstock objection No. 19 and related objections made, argued and submitted, and affidavit of Thomas T. Railey, Esq. in support of such motion, filed.

Jan. 19 Hearing on aforesaid objections to and claims for equitable treatment under plan of reorganization not being concluded at the hour of adjournment, further proceedings on such hearing postponed until March 19, 1945.

Jan. 19 Objector Comstock granted until Feb. 19, 1945 to submit brief in support of his objections other than those yet to be heard, and other counsel granted until March 5th in which to submit answering briefs.

Feb. 23 Affidavits of C. L. Peckham, et al, supplemental to the petition heretofore filed of Alleghany Corporation for reimbursement of expenses, together with certificate as to filing and service upon parties in interest, filed in triplicate.

Feb. 23 Affidavits in triplicate of Edward F. Hayes, et al, in support of petition for allowance heretofore filed of G. H. Walker, et al, as a Protective Committee for holders of First Mortgage Bonds and Income Bond of N. O. T. M. Ry. Co., together with certificate as to filing and proof of service upon parties in interest, filed.

Mar. 17 Order filed denying without prejudice (1) the motion made at the opening of hearing on certain objections of Andrew W. Comstock to Plan of Reorganization by George S. Leisure, counsel for Alleghany Corp., and renewed at the close of objector's case, that objections of Andrew W. Comstock numbered from 20 to 23, inclusive, be dismissed; (2) motion made at close of objector's case by Harry Kirshbaum, counts *1* for Convertible Bondholders Group, that objections of Andrew W. Comstock numbered 1 to 8, inclusive, and numbered 13, 19 and 26, and the claim for equitable treatment based thereon be dismissed and stricken, as well as denying without prejudice said movant's demurrer to said objector's case; (3) Motion made at close of objector's case by W. Lloyd Kitchel, counsel for Group of Institutional Holders, and joined in by James L. Homire, counsel for RFC and Marion B. Pierce, counsel for debtor, to strike all testimony and evidence in connection with hearing on objections of Andrew W. Comstock numbered 19 and related objections, and claim for equitable treatment; and (4) motion made at close of objector's case by aforesaid W. Lloyd Kitchel, Esq., and joined in by James L. Homire, and Marion B. Pierce, as counsel for aforesaid parties, requesting the overruling of Andrew W. [Constock's]

objection number 19 and related objections and related claim for equitable treatment on the ground of laches.

Mar. 19 Hearing on Andrew W. Comstock objection No. 19 and related objections to, and claims for equitable treatment under proposed plan of reorganization as heretofore approved by the ICC resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a. m.

Mar. 20 Hearing on Andrew W. [Constock] objection No. 19 and related objections to, and claims for equitable treatment under plan of reorganization as heretofore approved by the ICC resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at 10 a. m.

Mar. 21 Hearing on Andrew W. Comstock exception No. 19 and related objections to, and claim for equitable treatment under plan of reorganization heretofore approved by the ICC resumed, but not being concluded at the hour of adjournment, further proceedings postponed until tomorrow at ten a. m.

Mar. 22 Hearing on Andrew W. Comstock *exception* No. 19 and related objections to, and claims for equitable treatment under the plan of reorganization heretofore approved by the ICC resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a. m.

Mar. 23 Hearing on Andrew W. Comstock objection No. 19 and related objections to, and claims for equitable treatment under plan of reorganization as heretofore approved by the ICC, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a. m.

Mar. 24 Hearing on [October] 19 and related objections to, and claims for *equitable under*, plan of reorganization for debtor heretofore approved by the ICC, of Andrew W. Comstock resumed and concluded. Thereupon Institutional Group of Bondholders of First and Refunding Mortgage Bonds, through its counsel, makes and submits to the Court its oral motion to dismiss Comstock Objection No. 19 and related objections, and claims for equitable treatment, on the merits for failure to make a case; as well as renews and submits its oral motion heretofore made to dismiss such objections because of laches, aforesaid motions being joined in by the RFC, through its counsel. Whereupon said motions are taken by the Court as submitted, and said Comstock Objection No. 19 and related objections, and claims for equitable treatment relative to aforesaid plan of reorganization are taken by the Court as submitted on briefs heretofore filed and to be hereafter filed; aforesaid objector granted 30 days within which to submit brief and proponents of said plan 30 days thereafter in which to submit answering briefs.

Mar. 24 Objections of Andrew W. Comstock Nos. 20 to 23 inclusive, to said plan of reorganization are [possed] for hearing to April 23rd, 1945 at ten a. m.

Mar. 24 Alleghany Corporation, through its counsel, resubmits on the grounds therein stated, its motion with supporting affidavits heretofore filed to dismiss Comstock objection Nos. 20 to 23 inclusive.

Order

As to Procedure on Hearing on Objections to Plan of Reorganization and Claims for Equitable Treatment Based Thereon.

(Filed January 17, 1945.)

(Order No. 2707.)

Counsel for Reconstruction Finance Corporation having moved in open Court on the entire record and proceedings heretofore had in this Court and in the Interstate Commerce Commission in these reorganization proceedings, for certain rulings with respect to procedure for hearing Objections to the Plan of Reorganization and Claims for Equitable Treatment based thereon in respect of the Plan of Reorganization as approved by a Supplemental Report and Order of the Interstate Commerce Commission dated July 4, 1944, and by its Third Supplemental Report and Third Supplemental Order dated October 9, 1944, and certified to this Court on October 13, 1944, the Counsel for the Group of Institutional Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds having joined in said Motion, and counsel for Andrew Comstock having opposed the motion and the Court having considered the arguments of counsel, and it appearing to the Court that it will be in the interest of expeditious and orderly procedure to make the provisions hereinafter set forth, and the Court being fully advised in the premises:

It Is Ordered:

1. That hearing on Andrew W. Comstock's Objection 19 and related Objections, to the extent that they are dependent on Objection 19, and his Claim for Equitable Treatment based thereon (said related Objections being numbered 1, 2, 3, 4, 5, 6, 7, 8, 13 and 26) be separated from hearing on all other Objections and Claims for Equitable Treatment, and that they be heard separately from other Objections filed by Comstock and separately

from Objections filed by other parties, all pursuant to Rule 42 (b) of the Rules of Civil Procedure, which Rules are made applicable to proceedings in bankruptcy by General Order No. 37.

2. That this Court proceed to hear all Objections to the Plan which are not included in Comstock's Objection 19 and related Objections, to the extent that they are not dependent on Objection 19.

3. That this Court defer further hearing of any evidence on Comstock's Objection 19 and related Objections, as above defined in Subdivision (1) of said Motion, and of this Order, until after hearing on Objections not included in Comstock's Objection 19 and related Objections as defined as aforesaid.

4. The Court hereby reserves jurisdiction to make such further order as may be deemed by it to be advisable in the premises, including without limitation jurisdiction, if it be so disposed, and in order to co-ordinate its function with that of the Interstate Commerce Commission at this critical stage of these proceedings, to invite the said Commission to issue such further supplemental report as this Court and the Commission may deem appropriate or necessary to provide for such alternative allocations of securities as may be required to meet the necessities of any ruling which this Court or any appellate court vested with power to review these proceedings may hereafter make in respect of the controversy raised by Comstock's Claim for Equitable Treatment of the Missouri Pacific Secured Serial 5¼% Bonds, based on his Objection 19 and related Objections, as defined as aforesaid.

GEO. H. MOORE,
Judge,
United States District Court.

Dated: January 17th, 1945.

(Transcript of Hearing on Objections to Plan of Reorganization as approved by Interstate Commerce Commission and on Claims for Equitable Treatment.)

(Filed December 26, 1945.)

District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

Be It Remembered: That commencing on January 8, 1945, during the September Term, 1944, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, there came on to be heard before the Honorable George H. Moore, objections to Plan of Reorganization as approved by the Interstate Commerce Commission and on claims for equitable treatment thereunder, whereupon the following proceedings were had:

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(Appearances of Counsel omitted.)

The Court: Are there any suggestions as to the order of procedure here?

(Here ensued informal discussion as to the order of procedure to be followed.)

Mr. Dearmont: May I first offer in evidence the Proof of Notice of the mailing to all parties and interests whose names and addresses are attached in Schedule A, Order 2604, setting this matter of the Plan of Reorganization for hearing on this date, and also the affidavits of publication of the notice of the hearing?

I should also like, for the benefit of the Court and all parties to this proceeding, to offer formally the testimony that was offered before the Interstate Commerce Commis-

sion on the matter of a plan of reorganization by the Debtors in this proceeding; not only the testimony and exhibits offered at the hearing in Brooklyn, on October 19, 1943, but any pertinent prior testimony and records before the Commission in this proceeding which has been by the Commission certified to this Court.

The Court: Very well. I will now hear Mr. Gottlieb on his motion for dismissal of the proceedings.

(Said motion was thereupon orally argued, and by the Court overruled.)

Thereupon, various counsel made their respective opening statements to the Court, which statements had not been completed at the usual time for the noon recess.

The Court: We will adjourn until two o'clock.

Thereafter, on January 8, 1945, at two o'clock P. M., the hearing progressed as follows:

Counsel resumed the making of opening statements to the Court, at the conclusion of which an adjournment was taken until January 9, 1945, at ten o'clock A. M.

Met, pursuant to adjournment as above, on January 9, 1945, at ten o'clock A. M., whereupon the following proceedings were had:

Mr. Wallace: May I have just a half minute to state the position of the N. O. T. & M. Committee?

That Bondholders' Committee feels that this Plan might well have accorded to its bonds more favorable treatment in certain respects; however, the Committee thinks that the Plan on the whole is fair and equitable. Consequently, it urges and prays Your Honor to approve it. The time element outweighs every other consideration with the Committee at this juncture.

We ask Your Honor, also, to allow us to reserve, in the event that for any reason the Plan should not be approved, an opportunity to make such contentions as the Committee may feel obliged to offer.

(At this point Mr. Leisure orally argued the motion of Alleghany Corporation to expunge and dismiss Objections Nos. 20 to 23, inclusive, of objections to the Plan of Reorganization filed by Andrew W. Comstock.)

Mr. Homire: Whether this evidence that is about to be introduced relates to the inter-company claim of Missouri Pacific vs. N. O. T. & M., or to the Objection No. 19 of Mr. Comstock's objections, I would like to know first whether the transcript of proceedings of December 9th, on Mr. Comstock's motion for an order to proceed in the name of the Trustee, might be deemed to be in the evidence of this case. If not, I should like to move that it be deemed part of the record here.

I am particularly interested in connection with the statement that Mr. Brandwen made at that time as to the RFC., which is the pledgee of the notes which the N. O. T. & M. made and delivered to the Missouri Pacific. If his position is the same as it was then, this controversy is one in which the RFC. is not particularly concerned. For that reason, I feel that it would be in the interest of fair and orderly procedure to have the position stated about that at this time.

Mr. Brandwen: I am delighted to state that position. It is precisely the same as was stated at the hearing. I think Mr. Homire said December 9. It was December 1.

Mr. Homire: December 1.

Mr. Brandwen: It is precisely the same position and I am very pleased at the opportunity of repeating and affirming that position.

Mr. Homire: May it please the Court, instead of introducing this entire transcript, it has been suggested to Mr. Brandwen and agreed between Mr. Brandwen and myself that we may merely insert in this record that part which is pertinent to the question, and the reporter has that.

The Court: Very well.

Excerpts From Proceedings of December 1, 1944, on Hearing of Petition of Andrew W. Comstock for Order Granting Leave to Petitioner, in the Name of Guy A. Thompson, Trustee of Debtor, to File Objections to Claim of Missouri Pacific Railroad Company Against, N. O. T. & M., Etc.

Mr. Homire: You, of course, understand that these advances which the Missouri Pacific made to the N. O. T. & M. have been pledged to the Reconstruction Finance Corporation, which is the holder in good faith, as pledgee, without any notice of any infirmity whatever in those advances.

The notes were passed upon by the Interstate Commerce Commission in a Section 21a proceeding, under the Interstate Commerce Act. Throughout all of the petitions which have been filed, in which Mr. Brandwen or Mr. Biggs have participated, there has never been any statement of their position with respect to the pledge of those notes to the RFC. I think they ought to be required to state what their position is, and I think this will be a very opportune time.

Mr. Brandwen: I was going to come to the Reconstruction Finance Corporation later, Mr. Homire.

Mr. Homire: I didn't want you to overlook it.

Mr. Brandwen: I am going to come to the RFC. and deal with that problem fully.

Mr. Homire: I hope you will.

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Mr. Brandwen: So that one thing is clear, the amount of the claim filed by the Missouri Pacific against the N. O. T. & M. is different from the notes which the RFC. claims were pledged by the Missouri Pacific to the RFC.

Secondly, in this matter we are not attempting to do anything so far as the RFC. is concerned, that is to say, if we are correct in our statement that the Missouri Pacific claim is not valid against the N. O. T. & M., that is an issue entirely distinct and different from what the rights

of the RFC. may be, either with respect to the Missouri Pacific or with respect to the N. O. T. & M. They are two distinct matters; that is to say, I, as a maker, may be induced by fraud to give a note to a payee. The payee may negotiate that note, let us assume, to a third person, who is a holder in good faith for value, without notice. There is no doctrine of law which precludes me, as the maker, from bringing an action against this payee for such relief as is appropriate by reason of the fraud practiced by the payee on the maker. No third person can ever prevent or bar that action being brought. If the payee does something that he, in all good conscience should not have done, then if, for example, the holder has to sue on that note, that presents quite another problem. We don't have to deal with that now. All we are dealing with now is purely the relationship between the maker and the payee, and nothing else, and I don't see how the RFC. is concerned with this in any way at all.

The RFC. says, in its Sixth Defense, as follows:

> "said matters and things are without effect in relation to RFC. and said notes in the hands of RFC. or its assigns constitute the valid, legal and binding obligations of the New Orleans to the extent required to satisfy RFC's loans as aforesaid."

Now, if, as I agree, said matters and things are without effect in relation to RFC., I don't see what RFC. is concerned about. I don't see how they are involved. I accept this language in their Answer, and I think they are right. They just say this is a matter without effect upon them. I agree with them.

Secondly, they say that the notes—and again, I want to say the notes do not represent all the advances purportedly made by Missouri Pacific to N. O. T. & M.—they say the notes in the hands of RFC. constitute a valid, legal and binding obligation of the New Orleans to the extent required to satisfy RFC's loans.

It would be very interesting to note that I made an analysis of the collateral that RFC. has outside of these nine million dollars of demand notes, and I attempted to get the market value of the collateral which they have.

As of last night's close, the market value of these securities, the First and Refunding 5's, which they have, the Convertible 5½'s, the N. O. T. & M., International-Great Northern Adjustments, the Texas-Pacific Company, the Prescott Bonds, the Denver & Rio Grande, the Fort Worth Stock, and the American Refrigerator Stock, had a value last night of $29,608,000. The RFC. claim is $23,134,000. Under the terms of the Plan they are to get cash settlement for interest of $5,329,242. So, their total claim, according to the Plan—and I am not questioning their right to receive that, not at all—is $28,463,242. In other words, they have collateral, without dealing with these notes in any way at all, or even without dealing with the $1,900,000. First Mortgage bonds of the N. O. T. & M.—they have collateral that has a value of $1,144,000. in excess of their claim, principal, plus the amount that has been agreed upon under the Plan as settlement for interest, and that does not include the excess amount of interest which has been paid in recent payments made in 1943 and 1944, on the First and Refunding 5's, which the RFC. has.

So, I would say, based on last night's quotations—and I am not saying these quotations are conclusive; the RFC., in a brief, stated the market values are lower than the real value of collateral, but taking the market value as of last night, I would say the collateral the RFC. has is in excess probably as high as two million dollars above the principal plus the amount of interest which has been agreed upon in the Plan, and that is without touching these notes and without touching the $1,900,000. of these First Mortgage bonds of the N. O. T. & M.

Then, under these circumstances, so far as the RFC. is concerned, frankly, I don't see why they are concerned. Nobody wants to take away from them what they want to get under the Plan. So far as we are concerned, there is no reason why they should not be paid everything in full, plus the amount of interest as agreed upon. We go for it. But there is no reason why, when they have all this valuable collateral, they should be bothered about something that is purely an internal matter of a claim filed by the Missouri Pacific against the N. O. T. & M. We say we are vitally affected and they are not vitally affected, and

there is no reason why we should not be permitted to have the matter determined. We say there is also the doctrine of marshalling—if there is not enough received from the other collateral, if there is any question about that, then you may have something to complain of, and that is recognized by the Answer of the RFC., when they say it is a binding obligation "to the extent required to satisfy RFC's claim as aforesaid." So that, it would seem to me, as far as the RFC. is concerned, its position is nothing to give it any concern at all, and the fact that the Court would order a marshalling in such a situation has been a doctrine recognized and hallowed by centuries of chancery decisions. Probably the latest one is the decision of the Supreme Court in the Milwaukee case.

Mr. Brandwen: May it please the Court, at this time I should like to ask for a ruling from Your Honor, if the Court please, that the hearing on the claim of the Missouri Pacific against the Estate of the New Orleans, Texas & Mexico Railway be treated as a separate hearing, and that I respectfully submit to Your Honor that at the conclusion or after the conclusion of the testimony, to be submitted in connection with that claim, and arguments made with respect thereto, Your Honor make separate findings of fact, separate conclusions of law and a separate order thereon. I urge that most respectfully on this Court for, among others, the following reasons: The Bankruptcy Act requires that there be a determination of claims and that the determination of claims be made irrespective of the existence of any plan or irrespective of the relationship of such claims to any particular plan, so that if, for example, the Court should, when it deals with the question of the fairness and equity of the Plan, find that the Plan is unfair and inequitable, there still is a separate determination of this inter-company claim. We have heard so much about it, and I think in view of all the circumstances, in conformity with the mandate of the Bankruptcy Act there must be this separate hearing and separate findings of fact, separate conclusions of law and

a separate order. A second reason why we urge that upon your Honor most respectfully is that under the Federal Rules of Practice, joinder of proceedings has been materially liberalized. It has been the policy of the draftsmen of the Federal Rules of Procedure to provide for a liberal employment and exercise of the processes of joinder. However, that should not obscure the fact that what we have here in its essential analysis is the assertion of a claim against the Estate of New Orleans, Texas & Mexico. It is localized and particularized in that specific manner, and in the interest of simplicity, in the interest of expedition and above all, in the interest of having this large claim which, with interest, amounts to approximately eighteen million dollars, determined judicially on the merits once and for all, irrespective of the fate of any other aspect of the proceeding. I feel impelled to submit respectfully to your Honor this application, that there be, that there now take place a separate hearing on this claim. I am through on this motion.

Mr. Kitchel: Your Honor, we realize that there should be a judicial determination of this claim, but in that connection we still must raise the point in due course that the judicial determination must be taken in due time and not at the end of the proceedings. Now, as to the question of a separate hearing on this claim which counsel states is for the purpose of simplicity and for expediting the matter, if you have a separate hearing on this claim, how is that going to expedite anything, if he has a separate order and he appeals from that? This is a hearing on the Plan. The question of the validity of this claim has been raised. It can be heard here as a part of the hearing on the approval of the Plan, just as well as it can be heard as a separate hearing. The proof of the claim is already in the record before your Honor, not that it was given before the Court, but that was given in detail before the Interstate Commerce Commission, and that record is before the Court. The Court and the Commission operate together in this proceeding. I see no reason at all why there should be a separate hearing and a separate order, but I ask that this hearing on the Plan

proceed in the usual, orderly manner. The question has been raised, and is now in issue and can be disposed of here and now in the general hearing on the Plan, and I ask that the motion be denied.

Mr. Brandwen: If your Honor please, Mr. Kitchel stated that he recognizes that there must be a judicial determination of this claim, and he says in due time. I want to point out, if your Honor please, that if there ever was or if there ever is in any legal situation a time that may be described as due time, I say this is the time. If, as I assume, Mr. Kitchel, his clients and other proponents of the Plan are interested in expedition, are interested in the fate of the plan, they would be, I respectfully submit, courting the most unprecedented kind of delay if effect were really given to the argument of Mr. Kitchel that this is not the due time.

Now, I say that a comparable issue, I say comparable in legal jurisprudence, was presented to the Supreme Court of the United States in the Milwaukee case, and Mr. Justice Douglas writing the opinion for the Court, sent that Plan back, because of a dispute that in its dignity was not even so high as this claim is, because the Courts below did not resolve that dispute, and if these people want to have that kind of result, then they may get some comfort from their argument that this is not in due time.

Secondly, the Supreme Court, and there may be a little repetition in some of these points that I make, but I have to answer them, because as often as the specter of this argument is raised, I shall have to answer it, that the Court may not with respect to the Plan decide its fairness unless this matter is determined, and as I said earlier, that the determination of this claim is a judicial function, an exclusively judicial function. If there is one respect under Section 77 where the function is not distributed over the two agencies, the Commission and the Court, this is a function that is exclusively judicial, so that, mind you, if, and I do not agree on this with Mr. Kitchel, but if by any chance the inter-company claim were really considered in all its ramifications, I would say this Court

must determine this matter as the Supreme Court has said, as an independent matter. The Court must act on its own independent judgment, its own independent appraisal, but you don't have even that hypothetical case. I have stated here as categorically as I can make any kind of statement that no one who has the wit to read can say that the facts with respect to this claim have been even in any substantial measure submitted to the Interstate Commerce Commission below. If your Honor feels, with respect to possible appeals, I don't know who the appellants are going to be, I don't suppose anyone in this room knows who the appellants are going to be, that if, for example, there is an appeal in connection with the claim, I think I am quoting the Circuit Court correctly when it expressed itself on Saturday that anything other than matters dealing with the claim would not go up in connection therewith, so that if, for example, any party should feel aggrieved by a ruling with respect to the claim, that would be heard no matter what the ruling may be on anything else, so that so far as that is concerned, let it be perfectly clear that no device can properly be employed which will delay the ultimate consideration of this claim. I think that in view of the fact that there is a plain mandate by the Congress of the United States on the Court to hear and determine claims, it seems to me that the most effective way and really the only way to make sure this matter is determined, is to have a separate hearing on this claim.

Mr. Kitchel: Your Honor, I perhaps didn't make myself clear. I didn't mean to intimate that he had no right to put in his objections to the claim now or put in the proof, I didn't mean to say that; I meant to say that this is not the proper time to raise this question of laches. I see no reason, as I said before, why there should be a separate hearing. This is a hearing on a Plan, objections to the Plan, the issue is here, let's try it.

Mr. Brandwen: If your Honor please, I want to call your Honor's attention to the fact that on December 1st, an application was heard for a hearing on the determination of this claim. I wanted that as a separate hearing.

I asked for that, and I pointed out there that I thought there would be confusion, there would be difficulty in segregating issues no matter how much your Honor might try to keep the issues separate, unless you had a separate hearing. I tried to do everything I could to have the separate hearing at an earlier date, and I don't want any delay on this, I am ready to go on right now, but I do want to have it made perfectly clear that I feel we have a right, a clear right to a separate hearing on this claim.

Mr. Kitchel: Just one more word on that. I was not present at the time, but I am informed that at the hearing before the Circuit Court of Appeals on Saturday Mr. Brandwen raised the same point, that he should have a separate hearing on this claim. This Court simply denied his motion in toto, which was a motion for a stay.

The Court: The motion for a separate hearing is overruled.

Mr. Brandwen: Let the record show an exception to that, please.

The Court: Yes.

Mr. Brandwen: Do I understand your Honor is making a ruling with respect to separate findings of fact at the same time?

The Court: Yes.

Mr. Brandwen: On all of them?

The Court: Yes.

Mr. Brandwen: Then I want my exception noted on that aspect, too. I would like to ask at this point for the production by the Trustee, his counsel, for the claim filed against New Orleans, Texas & Mexico.

Mr. Dearmont: I do not have the original, but I have a copy. We will produce the original if you desire.

Mr. Brandwen: A copy is perfectly satisfactory. Counsel for the Trustee just handed me a copy of the claim, proof of claim, executed by, I am quoting now, "Missouri Pacific R. R. Co., claimant, by F. P. Johnson, Vice-Presi-

dent," which was sworn to on the 28th day of August, 1933. This claim bears the notation that it is No. 1553, or bears the notation, "Claim No. 1553, received this date, August 29, 1933, A. T. Cole, Assistant Secretary." I assume that this is deemed part of the evidence, since it has been in the hearings.

The Court: It may be so understood.

Mr. Brandwen: May I ask counsel for the Trustee whether we may not accept the fact that on August 28th, 1933, when this claim was sworn to, the Estate of New Orleans, Texas & Mexico and the Estate of Missouri Pacific had Trustees administering their affairs.

Mr. Dearmont: That appears of record in this Court and, as a matter of fact, the Trustee was appointed, as I recall, according to my recollection, on July 1, 1933.

Mr. Brandwen: So it may be accepted that as of August 28th, 1933, there was a Trustee or Trustees of Missouri Pacific Railroad Company.

The Court: There is no question about that.

Mr. Brandwen: No question about that. And may I ask counsel for the Trustee this further question: may we assume that this claim, proof of claim, is the only proof of claim that was filed in connection with the matters referred to in this proof of claim?

Mr. Dearmont: I might state that I was not connected with this proceeding at that time at all. So far as my knowledge goes, there was never any other claim filed than the one copy of which you hold in your hand.

The Court: Mr. Railey is here. Mr. Railey would know, would he not?

Mr. Railey: That is correct.

Mr. Brandwen: Then we are correct in assuming, counsel for the Trustee, that the Trustee of Missouri Pacific or the Trustees of Missouri Pacific never filed a claim?

Mr. Dearmont: That is the only claim that has been filed.

Mr. Brandwen: So the answer to that question is, the Trustees of the Missouri Pacific never filed a claim against New Orleans, Texas & Mexico?

Mr. Dearmont: Unless the claim, copy of which counsel has before him, was filed at the direction of the Trustee.

The Court: Will you let me see that?

Mr. Brandwen: Sure. (Hands same to the Court.) If your Honor feels—while I regard this as a legally defective claim, I am not going to make any point of it at the moment. I understand the Trustee of Missouri Pacific Railroad is not in the Courtroom at the moment.

Mr. Dearmont: Mr. Thompson, I have just been advised over the phone since coming to Court this morning, is ill, confined to his bed under Doctor's orders. I haven't had an opportunity to call there myself. He is not here today, and that is my understanding.

Mr. Brandwen: In view of that unfortunate circumstance, I should like to ask counsel for the Trustee of Missouri Pacific Railroad Company a further question: Do you know whether the Trustee of Missouri Pacific Railroad Company considers this proof of claim which you handed me this morning a valid claim?

Mr. Dearmont: I think the Trustee of the Missouri Pacific would have to answer that for himself. I am not in a position to answer for him.

Mr. Brandwen: You are not in a position to answer. I assume, then, counsel for the Trustee, that you don't know what the Trustee's position is with respect to any aspects of this claim.

Mr. Dearmont: I can express my opinion if you would like to hear it.

Mr. Brandwen: No, I just asked you whether you know what the Trustee's position is.

The Court: You only want to know the Trustee's position?

Mr. Brandwen: The Trustee's position.

Mr. Dearmont: You will have to inquire of the Trustee.

Mr. Brandwen: Then withdraw the questions. Do you know, counsel for the Trustee of Missouri Pacific Railroad Company, whether the Trustee of Missouri Pacific Railroad Company ever submitted a memorandum to this Court bearing on this proof of claim, copy of which you handed me this morning?

Mr. Dearmont: Not to my knowledge.

Mr. Brandwen: Not to your knowledge. Do you know whether the Trustee of New Orleans, Texas & Mexico Railway ever filed an objection to the claim, copy of which you handed me this morning?

Mr. Dearmont: Not to my knowledge, and I am almost certain that he has not.

Mr. Brandwen: If your Honor please, I ask the Court to direct the Trustee of New Orleans, Texas & Mexico Railroad Company to file objections to the proof of claim filed by Missouri Pacific Railroad Company dated the 28th day of August, 1933.

Mr. Dearmont: I might object to that in behalf of the Trustee, if your Honor please, because the order directing the filing of claims in this proceeding specifically provides that any party may file a claim in this proceeding, and I believe the order provides for protest within sixty days thereafter. At any rate, it does provide that any party may file a claim in this proceeding.

The Court: Will the reporter please read me Mr. Brandwen's question?

(Record read.)

Mr. Dearmont: May I reply then to that order, if your Honor please, that any party in interest may file a protest to any claim filed in the proceeding. Therefore, if Mr. Brandwen has objection to this claim, he may, representing a creditor in these proceedings, file a protest, but here again, I think he need not attempt to cloak himself with the name of the Trustee.

The Court: Objection sustained.

Mr. Brandwen: Exception.

Mr. Kitchel: I just want to state on the record that the counsel for the Institutional Group adopts the statement made by Senator Dearmont.

Mr. Brandwen: At this point I should like to question the legal standing of counsel for the Institutional Groups to make any comment on the validity of the claim or invalidity of the claim asserted against the New Orleans, Texas & Mexico Railroad Compay. The Institutional Group of bondholders are claimants of the Missouri Pacific Railroad Company, they are not claimants in any way against the Estate of New Orleans, Texas & Mexico. No matter what joinder there may be in these proceedings, no joinder known to judicial decision can transmute a creditor or claimant against the Missouri Pacific Railroad to that of a creditor of New Orleans, Texas & Mexico. The mere fact that there has been this joinder should not obscure that basic fact. This is a claim that is being asserted against the Estate of the New Orleans, Texas & Mexico Railway Company. Counsel for the institutional groups has no claim against New Orleans, Texas & Mexico, no claim whatsoever. They are just creditors to the extent that they are creditors only of Missouri Pacific Railroad Company. There can be no question about that fact, and Mr. Kitchel, and I am not relying on this very heavily, because the former is the legal status clearly, Mr. Kitchel himself stated at the opening of this matter this morning that the determination of the validity or invalidity of this claim will not affect, need not affect the allocation of the securities to be given to the First and refunding bondholders, some of which he represents, some of whom he represents.

Mr. Kitchel: May I answer on that point, your Honor?

The Court: Certainly.

Mr. Kitchel: We are parties to this proceeding, we have been allowed to intervene and to be heard on all questions. Although this determination of this claim may not affect the allocations given to us, we are a party to this case, anxious to have this Plan put through without further

delay. We have a right to be heard on every question here. Now, as to the point that I haven't any standing to question this objection because I am a Missouri Pacific holder, Mr. Brandwen's client is a Missouri Pacific holder, he is in the same category as I am.

Mr. Brandwen: Well, I hope it is unnecessary to point out that the 5-¼ per cent secured bondholders have an interest in both Estates. In that respect their position is unique. The Reconstruction Finance Corporation, if there was any question about their being taken care of in full, are also in that position. That is not so with respect to the Missouri Pacific First Refunding Fives.

The Court: Are you asking for a ruling?

Mr. Brandwen: I am asking for a ruling.

The Court: The Court will rule they have a right to be heard.

Mr. Brandwen: An exception. And I understand that your Honor has ruled against requiring, directing the Trustee of New Orleans, Texas & Mexico to file objections to the claim filed by Missouri Pacific Railroad Company?

The Court: The Court so ruled.

Mr. Brandwen: The Court has so ruled, and may I have an exception to that?

The Court: Certainly.

Mr. Brandwen: If your Honor please, in view of the fact that the Estate of New Orleans, Texas & Mexico is without the benefit of an active, independent trustee to which it is entitled, defending the interest of the Estate of New Orleans, Texas & Mexico, and its security holders as against claims asserted by other entities, I now, ask your Honor to permit us to object and to contest the claim filed against New Orleans, Texas & Mexico by Missouri Pacific in the name of the Trustee of New Orleans, Texas & Mexico.

The Court: Do you care to be heard before the Court rules?

Mr. Dearmont: If your Honor please, I think it is not necessary to be heard, that matter was presented to you in December, and as you entered an order upon determination by this Court, it is now res adjudicata.

Mr. Brandwen: May I point out one thing, if your Honor please: when counsel for the Trustee says res adjudicata, I think he is a little mistaken, I think the order said without prejudice. If without prejudice makes it res adjudicata, that is contrary to my understanding.

The Court: The Court has ruled now, anyway.

Mr. Brandwen: But I would like to simply make it clear that I don't regard that as res adjudicata. I take an exception to that, if your Honor please.

If your Honor please, we are ready now to proceed, but we want to make it clear that we are not waiving our position and that we are reserving all the exceptions to your Honor's ruling, and I am now proceeding. If your Honor please, there was a subpoena served, subpoena duces tecum served on the Trustee to produce a number of books and records. Have those books and records that have been subpoenaed, been produced?

Mr. Dearmont: If your Honor please, representing the Trustee, the debtors in this proceeding, I filed promptly after service of the subpoena duces tecum a motion to suppress, offered testimony before this Court last Wednesday, as I recall, and the Court took that matter under advisement. At that hearing, and before your Honor took it under advisement, Mr. Biggs, associated with Mr. Brandwen in representing Mr. Comstock, stated to the Court, and to counsel and into the record in great detail, a substantial modification of the request made at the time the subpoena was issued. We advised that to the best of our ability we would undertake to produce, as they might need them in the progress of the hearing, such records that they request that might be available. We are prepared to carry out almost, I think, in full, the request made by Mr. Biggs, and a few additional ones that he has expressed to me orally since that time. We are not in a position, if your Honor please, to bring in two or three freight carloads of

basic records of the debtor in these proceedings that by no stretch of the imagination, as we view it, could be found at all material to any inquiry before the Court on this hearing, but we are prepared on their demand to produce every record that we can locate that is in existence, and we have had six or eight people working pretty busily on it for several weeks, because the demand has been a pretty extravagant demand in the opinion of counsel. We are ready to produce. Now, if your Honor would like to have them all brought into Court, we can do that. If we brought all that was set forth in the subpoena, there wouldn't be room for your Honor or any other lawyer to sit in this courtroom, because they would fill it completely.

Mr. Brandwen: Now, we have heard that a proof of claim has been presented. I now move and ask that that claimant go forward with the presentation of evidence in support of the claimant's claim.

Mr. Kitchel: Your Honor, as I stated before, the proof is in the record. It was put in in full by witness Wyer before the Interstate Commerce Commission. That testimony is before your Honor now. The claim is proved.

Mr. Brandwen: If your Honor please, I am not going to make any further comment beyond what we have already stated. There is no proof in the record.

The Court: The request is overruled.

Mr. Brandwen: Exception. I now move to have the claim filed by Missouri Pacific Railroad Company on the 28th day of August, 1933, filed against the New Orleans, Texas & Mexico Company, dismissed and disallowed.

Mr. Kitchel: I ask that that motion be denied on the fact that there is no proof in this Court or before the Commission that that claim is invalid. This objector has raised the objection. The burden is on him to support his objection.

Mr. Homire: We join in the motion to deny that request.

Mr. Brandwen: May it be understood, if your Honor please, that my objection with respect to Mr. Kitchel's

objections or comments as not being proper for this particular proceeding are continued in connection with the hearing on this inter-company claim, so that I will not have to repeat that.

The Court: It may continue throughout the hearing.

Mr. Brandwen: Every time.

The Court: Yes. The motion is denied.

Mr. Brandwen: Exception. I would like to make one point, if your Honor please, and that is that under well established principles of law that when a claim is filed by a parent against a dominated subsidiary, the burden of proof is entirely on the claimant. That is established in a number of Supreme Court cases, also established by decisions of this Circuit Court. In addition, under the terms of Order No. 235 heretofore entered by this Court, the burden is recognized as being on the claimant in even an ordinary situation, quite apart from this situation which involves a claim filed in a fiduciary relationship. I should have made that point before your Honor's ruling, but I assume that may be so treated. I will call Mr. Delaney to the witness stand.

JAMES M. DELANEY,

of lawful age, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in behalf of Andrew W. Comstock, as follows:

Direct Examination,

By Mr. Brandwen:

Q. Please state your name? A. James M. Delaney.

Q. Your address, Mr. Delaney?

A. 2300 Lincoln Park, West Chicago, Illinois.

Q. Your occupation? A. Certified Public Accountant.

Q. Would you please state briefly your educational background with respect to your accounting?

A. I received my accounting training at Northwestern University. I passed the Indiana State C. P. A. December

12, 1924, and have practiced as a certified public accountant for seventeen and one-half years.

Q. Will you state briefly for the record the nature of your experience in accounting work?

A. During my public practice I have audited many large and small corporations and have made special investigations for numerous financial institutions. Among the companies examined or investigated are Armour Grain, Insull Utilities, Ford Motor Company, Studebaker, General Motors, General Stock Yards Corporation, United Stock Yards Corporation. Those are just a partial list of the various companies we have audited or examined.

Q. In connection with the hearing that is now beginning, have you had occasion to make any kind of investigation?

A. I have.

Q. Will you please state very briefly what you have done in that connection?

A. I attended at the General Offices of the Missouri Pacific Railroad Company here in St. Louis and examined certain original books and records; attended at the Interstate Commerce Commission of Washington, D. C., examined certain annual reports on file there, and have attended at the New Orleans, Texas & Mexico general offices at Houston, Texas, for the purpose of examining certain original books and records at that location.

Q. When you refer to your attendance in Washington and your examination of records on file there, would you particularize those records with respect to companies; companies involved in these proceedings?

A. That is correct, New Orleans, Texas & Mexico, and certain subsidiaries.

Q. And in the course of your examination within the period concerning which you have just testified, you made extracts from those original books and records and accounts? A. I did.

Q. And on the basis of those extracts, and the information obtained from those books, original books and records and original accounts, you prepared schedules? A. I did.

Q. And you prepared analyses? A. I did.

Q. Mr. Delaney, in the course of your examination of the books and records of Missouri Pacific Railroad Com-

pany did you examine records bearing on the date and amount of the acquisition of the capital stock of New Orleans, Texas & Mexico by the Missouri Pacific Railroad?

A. I did.

Q. And what do those records disclose?

A. Those records disclose that on June 30th, 1924, the Missouri Pacific Railroad Company acquired 37,500 shares of New Orleans, Texas & Mexico Railroad Company stock.

Q. Was the price given?

A. Not on this schedule that I examined.

Q. Go ahead.

A. On December 31, 1924, the schedule indicated 49,266 additional shares were acquired. On January 31, 1925, 17,314. February 28, 1935, 4,401.

Q. I think you are going a little too fast for the court reporter.

Mr. Kitchel: May I have the last?

Mr. Brandwen: I am sorry to interrupt you, Mr. Delaney.

Mr. Kitchel: Would he repeat the last?

The Court: That was on December when?

Mr. Brandwen: Q. Suppose you repeat several of them.
A. June 30th, 1924.

The Court: June 30th?
A. 37,500 shares. December, 1924, 49,266.

The Court: Twenty-nine thousand?
A. Forty-nine thousand.

The Court: Forty-nine thousand what?
A. 266. January, 1925, 17,314. February, 1925, 4,401. March, 1925, 4,686. April, 1925, 10,832. May, 1925, 3,123.

The Court: Three thousand what?
A. 123. June, 1,816. July, 303. August, 1925, 203. September, 1925, 301. October, 1925, 100 shares. November, 1925, 12 shares. April 30th 1926, 1,702. May 30th, 1926, 25 shares. June, 1926, 9 shares. October, 1926, 12 shares. November 30th, 1928, 1,670 shares. December, 1928, 235. January, 1929, 320 shares. February, 1929, 20 shares. March, 1929, 330 shares. April 30th, 1929, 655. May, 1929,

1,724. June, 1929, 55 shares. July, 181 shares. August, 22 shares. September, 380. October, 370. November, 450. December, 1929, 170. January, 1930, 140 shares. March, 1930, 80 shares. July, 1930, 71 shares. August, 1930, 10 shares. October 31st, 1930, 575 shares. November, 1930, 86 shares. December, 1930, 231 shares. May, 1931, 270 shares. June 30th, 1931, 50 shares. July 31st, 1931, 10 shares. August 31, 1931, 20 shares. A total of 139,730 shares.

The Court: This is the usual time for recess. Announce a recess until two o'clock.

(At this point the Court announced a recess until two o'clock P. M. of the same day, at which time the following proceedings were had, to-wit:)

After recess, on January 9, 1945, at two o'clock, P. M., the hearing was resumed as follows:

The Court: You may proceed.

Mr. Cole: May it please the Court, with the acquiescence of counsel, and, I trust, with the approval of the Court, may I state the position of my client, so that I may return to New York?

I am Mr. Cole, and represent the City Bank Farmers Trust Company, which is trustee under the International-Great Northern First Mortgage. As the record shows, the requisite percentage of our bondholders approved the Commission's plan, and in view of the fact that this present Plan before tthe Court gives our bondholders substantially better treatment, we feel that the vote of the bondholders the last time is a mandate for us not to oppose this Plan.

Further than that, we took an active part in negotiation of the compromise plan and succeeded in obtaining better treatment, not only as regards the Commission Plan, but as regards the original compromise plan as originally proposed to us. Consequently, we go a little further and say that, in our opinion, while this plan now before the Court gives our bondholders the minimum treatment to which

they are entitled, we think it, nevertheless, represents a fair compromise.

As regards the issues that are framed presently before Your Honor, I have listened to the rulings and arguments and the framing of the issues, and believe that the proceedings from now on can have no interest for my client.

As regards the New Orleans, Texas & Mexico debt, should Mr. Brandwen be successful in having that ruled out it would not affect the International-Great Northern bondholders unless it involved recapitalization, which presumably would have to go back to the Commission anyway.

As regards the subordination of the Alleghany claim, that is already taken care of by the Plan, the Commission's order.

I make this statement, because I think it is appropriate that I state our position on the record. Thank you.

Mr. Brandwen: If Your Honor please, I would like to have the copy of the Proof of Claim, which counsel for the Trustee handed me this morning, marked for Identification as Comstock Exhibit 1 for Identification.

(The exhibit indicated by counsel was marked as requested.) [See Vol. of Exs. p. 1.]

Direct Examination of James M. Delaney
Resumed by Mr. Brandwen:

Q. Mr. Delaney, before we adjourned this morning you listed the number of shares of the capital stock of New Orleans, Texas & Mexico Railway, which were acquired by Missouri Pacific Railroad Company. Can you tell us how many shares had been acquired by Missouri Pacific Railroad Company of the capital stock of the New Orleans, Texas & Mexico Railway Company by December 31, 1924? A. 86,766 shares.

Q. Do you know how many shares of capital stock of New Orleans, Texas & Mexico Railway are outstanding, based on the records that you have examined?

A. According to the 1943 Annual Report of Guy A. Thompson, Trustee, page 19 indicates 148,329 shares of common stock are outstanding.

Mr. Brandwen: At this point, if Your Honor please, I would like to introduce a series of exhibits and, naturally, they are subject to correction.

I want to introduce for the first exhibit a schedule of officers and directors of the Missouri Pacific Railroad Company for the year 1923.

Mr. McConaughy: Have you copies?

Mr. Brandwen: I would have to get them. The source is stated there and, of course, this may be corrected if any error has occurred.

(The document last introduced by counsel was marked Comstock Exhibit 2.) [See Vol. of Exs. p. 3.]

Mr. Brandwen: I now offer a schedule showing the officers and directors of the New Orleans, Texas & Mexico Railway for the year 1923, and ask that that be marked in evidence.

(The document last indicated was marked Comstock Exhibit 3.) [See Vol. of Exs. p. 4.]

Mr. Brandwen: I now offer a schedule showing the officers and directors of the Missouri Pacific Railroad Company for the year 1924.

(The document last indicated was marked Comstock Exhibit 4.) [See Vol. of Exs. p. 5.]

Mr. Brandwen: I now offer a schedule showing the officers and directors of the New Orleans, Texas & Mexico Railway Company for the year 1924.

(Here ensued private colloquy between Mr. Brandwen and Mr. McConaughy.)

Mr. Brandwen: If any errors have occurred we would appreciate that being called to our attention.

(The document last indicated by counsel was marked Comstock Exhibit 5.) [See Vol. of Exs. p. 6.]

Mr. Brandwen: I now offer in evidence a schedule containing the officers and directors of the International-Great Northern Railroad Company for the year 1924.

(The document last offered in evidence was marked Comstock Exhibit 6.) [See Vol. of Exs. p. 7.]

Mr. Brandwen: I now offer a schedule listing the officers and directors of St. Louis, Brownsville and Mexico Railway Company for the year 1924.

(The document last indicated was marked Comstock Exhibit 7.) [See Vol. of Exs. p. 7.]

Mr. Brandwen: I now offer in evidence a schedule listing officers and directors of the Beaumont, Sour Lake and Western, for 1924.

(The document last indicated was marked Comstock Exhibit 8.) [See Vol. of Exs. p. 8.]

Mr. Brandwen: I now offer a schedule listing the officers, directors and executive committee of the Missouri Pacific Railroad Company for the year 1925.

(The document last indicated was marked Comstock Exhibit 9.) [See Vol. of Exs. p. 9.]

Mr. Brandwen: I want to make this statement at this point: I couldn't help overhearing Mr. Teitelbaum's comment to Mr. McConaughy. These lists of directors are given for calendar years. Naturally, I understand that the directors serve between one annual meeting and another. I don't have the exact dates of these periods and, of course, these schedules may be amended to conform to that fact.

Mr. McConaughy: I should think that we ought to be able to get together and agree on a list of officers and directors for those you are interested in, without taking so much time. I think that can be done after Court tonight.

Mr. Brandwen: All I want to put in is the list of officers, directors and executive committee members of these various companies from the date of acquisition of the

stock of the New Orleans, Texas & Mexico by Missouri Pacific until the date of bankruptcy.

Mr. McConaughy: If you will give us your list we will check it over, the whole group, and you can have them in the morning. We will check it over tonight.

Mr. Brandwen: They still will have to be marked, won't they?

Mr. McConaughy: I suppose they will.

Mr. Brandwen: They will still have to be marked.

Mr. McConaughy: Go ahead.

Mr. Brandwen: Next is a schedule of officers and directors of the New Orleans, Texas & Mexico Railway for the year 1925.

(The document last indicated was marked Comstock Exhibit 10.) [See Vol. of Exs. p. 10.]

Mr. Brandwen: Next is a schedule of directors and officers of the International-Great Northern Railroad Company for the year 1925.

(The document last indicated was marked Comstock Exhibit 11.) [See Vol. of Exs. p. 11.]

Mr. Brandwen: I now offer the schedule listing the officers and directors of the St. Louis, Brownsville and Mexico Railway for the year 1925.

(The document last indicated was marked Comstock Exhibit 12.) [See Vol. of Exs. p. 12.]

Mr. Brandwen: I now offer a schedule of officers and directors of the Beaumont, Sour Lake for the year 1925.

(The document last indicated was marked Comstock Exhibit 13.) [See Vol. of Exs. p. 13.]

(Here ensued colloquy between Mr. Brandwen and Mr. McConaughy.)

Mr. Brandwen: Perhaps this suggestion might simplify matters a little: I offer here a list of officers, executive committee and directors of the Missouri Pacific Railroad,

New Orleans, Texas and Mexico, International-Great Northern, St. Louis, Brownsville and Mexico, and Beaumont, Sour Lake, for the years 1926, 1927, 1928, 1929, 1930, 1931, 1932, and 1933.

(Here followed discussion of how these exhibits shall be marked.)

(The exhibits were thereupon marked Comstock Exhibits 14 to 21, both inclusive, the attached pages to each exhibit also being marked. The designations of the attached sheets last referred to will be supplied later.) [See Vol. of Exs. pp. 14 to 61, incl.]

Mr. Brandwen: Mr. Delaney, you stated this morning that you made an examination of many reports filed by the New Orleans, Texas & Mexico Railway Company—and by that I mean the parent—with the Interstate Commerce Commission, for a period of years? A. I did.

Q. According to the information submitted by the New Orleans, Texas & Mexico Railway Company to the Interstate Commerce Commission what did it report as its net railway operating income for the year 1925? A. $1,323,570.

Q. Did the New Orleans, Texas & Mexico Railway Company, in that same report, report the receipt of any other income? A. Yes.

Q. Will you please identify the nature of the other income reported as having been received by the New Orleans, Texas & Mexico that year?

The Court: What year?

Mr. Brandwen: 1925.

A. The report indicates that interest of $962,686 was received and other income of $150,677.

Q. So that the total other income reported by the New Orleans, Texas & Mexico for that year was $1,113,363.?

A. That is correct.

Q. Now, that same report reported also some deductions, did it not? A. That is correct.

Q. Would you please particularize those deductions?

A. The report indicated miscellaneous deductions of $109,516.; interest on unfunded debt $25,693.

Q. May I interrupt you. When you speak of "miscellaneous deductions" is that the category as it appears in the report? A. That is correct.

Q. Continue. You said that the report also disclosed interest on unfunded debt of $25,693.? A. That is correct.

Q. Then what does the report disclose as the net income of the New Orleans, Texas & Mexico in the year 1925, before interest on funded debts? A. $2,300,724.

Q. What does this report report as interest on funded debt for that year? A. $1,463,438.

Q. What was the net income reported by this report to the Interstate Commerce Commission for the year 1925, after fixed charges? A. $837,286.

Q. Going to the year 1926, what does this Report—when I say "this Report" I am referring to the report submitted by the New Orleans, Texas & Mexico Railway Company to the Interstate Commerce Commission—disclose as the net railway operating income for 1926? A. $1,038,908.

Q. Does it report the receipt of other income? A. It does.

Q. Will you particularize the items?

A. The report indicates dividends received of $783,987., interest income $1,220,924., other income $47,623.

Q. Or a total of other income? A. $2,052,534.

Q. Mr. Delaney, does the report indicate from whom the New Orleans, Texas & Mexico Railway received these dividends of $783,987.? A. It does.

Q. From whom?

A. The report indicates that the dividend was received from the St. Louis, Brownsville and Mexico Railway Company, $783,987.

Q. Does the report indicate from whom New Orleans, Texas & Mexico Railway Company received interest?

A. It does.

Q. Would you give us that information?

A. The report indicates that interest in the amount of $774,802. was received from the St. Louis, Brownsville and Mexico Railway Company; $123,469. from Beaumont, Sour Lake and Western; $64,016. from Orange & Northwestern; $239,037. from San Antonio, Uvalde & Gulf; $19,200. from Sugar Land; $400. from Houston Belt & Terminal. That was a total of $1,220,924.

Q. This report also discloses deductions of one character or another, does it not? A. It does.

Q. Please particularize them as they appeared in the report.

A. The report indicates miscellaneous deductions of $9,745.; interest on unfunded debt, $726.

Q. What does the report disclose as the net income before interest on funded debt for 1926? A. $3,060,971.

Q. Interest on funded debt is disclosed? A. $1,692,764.

Q. The report discloses there is a net income after fixed charges of $1,388,207.? A. That is correct.

Q. Coming to 1927, what does this report disclose as net railway operating income for that year? A. $301,833.

Q. The report discloses other income, does it not?

A. It does.

Q. Particularize that, please.

A. The report indicates dividends received $976,753.; interest income of $1,562,277., and other income of $33,103.

Q. Making a total income of? A. $2,572,133.

Q. Would you please state for the record from whom these dividends were reported as having been received by New Orleans, Texas & Mexico?

A. The report indicates a payment was received from the St. Louis, Brownsville and Mexico Railway Company, total amount $976,753.

Q. Please state from whom the New Orleans, Texas & Mexico received the interest income reported in this report.

A. The report indicates that the interest, in the amount of $774,800., was received from the St. Louis, Brownsville and Mexico; $123,469. from the Beaumont, Sour Lake and Western; $64,016. from the Orange & Northwestern Railroad; $220,650. from San Antonio, Uvalde & Gulf; $19,200. from Sugar Land; $82,250. from International-Great Northern Railroad Company; $2,590. from Houston & Brazos Valley; $274,902. from Houston & Brazos Valley on their notes, and $400. from the Houston Belt & Terminal Railroad Company; total $1,562,277.

Q. This report also discloses deductions, does it not?

A. It does.

Q. Please particularize them as reported.

A. The report indicates miscellaneous deductions $10,347.; interest on unfunded debt, $28,732.

Q. What does the report show the net income of the road before interest on funded debt? A. $2,834,887.

Q. And the interest on funded debt for that year is reported? A. $1,924,926.

Q. That making a net income, after fixed charges for the year, $909,961? A. Yes.

Q. Coming to the year 1928, Mr. Delaney, what does that report disclose with respect to the net railway operating income? A. That report indicates a net $921,700.

Q. You are always speaking of the New Orleans, Texas & Mexico, the parent itself? A. I am.

Q. This report discloses items of other income, does it not? A. It does.

Q. Particularize that, please.

A. The report indicates dividend income $303,329.; interest income $1,431,477., and other income of $14,633.

Q. Making a total of income? A. $2,049,439.

Q. Please state what the report discloses as to the source of dividends received.

A. The report indicates that dividends were received from the St. Louis, Brownsville and Mexico, in the amount of $303,329.

Q. What does the report disclose as to the source of the interest income of the New Orleans, Texas & Mexico for that year?

A. The report indicates that interest was received from the St. Louis, Brownsville and Mexico, in the amount of $774,800.; Beaumont, Sour Lake and Western Railroad, $123,469.; Orange & Northwestern, $64,016.; San Antonio, Uvalde & Gulf, $220,650.; Sugarland, $19,200.; Houston & Brazos Valley, $21,000.; Houston-North Shore, $77,475.; International-Great Northern, $49,486.; Houston & Brazos Valley notes, $70,189.; Houston Belt & Terminal Railroad, $400.; Texas City Terminal, $5,500., and there is an item of $5,292., which makes a total of $1,431,477.

Q. This report also discloses deductions, does it not?

A. It does.

Q. Please particularize them.

A. The report indicates miscellaneous deductions of $9,952. and interest on unfunded debt, $29,432.

Q. And the report discloses the net income before interest on funded debt of New Orleans, Texas & Mexico, for the year 1929 to be? A. $2,931,755.

Q. What does the report disclose as interest on debt of the New Orleans, Texas & Mexico for that year?

A. $2,194,410.

Q. What does the report disclose as the net income after fixed charges? A. $737,345.

Q. Coming to the year 1929, what does the report disclose as the net operating railway income for that year, for the New Orleans, Texas & Mexico? A. $1,022,463.

Q. And the report discloses other income? A. It does.

Q. Particularize that, please.

A. The report indicates dividend income of $1,039,970.; interest income, $1,401,394., and other income, $11,675.

Q. Making a total of other income of? A. $2,453,039.

Q. Would you please state the source of dividends of the New Orleans, Texas & Mexico for the year 1929, as reported in this report?

A. The report indicates that dividends were received from the St. Louis, Brownsville Railroad, $1,039,970.

Q. Please state the reported source of the interest income.

A. The report indicates interest income from St. Louis, Brownsville and Mexico, $774,800.; Beaumont, Sour Lake and Western, $123,469.; Orange & Northwestern, $64,016.; San Antonio, Uvalde & Gulf, $220,650.; Sugar Land, $19,200.; Houston & Brazos Valley, $22,751.; Houston-North Shore, $51,000.; International-Great Northern Railroad, $49,338.; Houston & Brazos notes, $66,290.; Houston Belt & Terminal, $400.; Texas City Terminal, $9,480., a total of $1,401,394.

Q. If the report also discloses deductions, please particularize them.

A. The report indicates miscellaneous deductions of $10,069.; interest on unfunded debt of $1,885., and net income before interest on funded debt of $3,463,543.

Q. And interest on funded debt, as disclosed in that report, is what? A. $2,314,352.

Q. Leaving net income after fixed charges? A. $1,149,195.

Q. Coming to the year 1930, Mr. Delaney, what does this

report of the New Orleans, Texas & Mexico, the parent, disclose as to the net railway operating income?

A. The report indicates $[illegible].

Q. What other income does it report?

A. The report indicates dividends received, $932,897.; interest income, $1,367,096.; other income, $14,911.

Q. Would you please particularize the source of the dividends?

A. The report indicates dividends were received from the St. Louis, Brownsville and Mexico Railway Company, in the amount of $930,897.

Q. 930? A. $932,897.

Q. Please particularize the source of the interest income.

A. The report indicates interest income was received from the St. Louis, Brownsville and Mexico Railway in the amount of $774,800.; Beaumont, Sour Lake and Western, $123,469.; Orange & Northwestern Railroad, $64,016.; San Antonio, Uvalde & Gulf, $220,650.; Sugar Land, $19,200.; Houston & Brazos Valley, $60,000; Houston and North Shore, $51,000.; International-Great Northern, $49,338.; Houston Belt & Terminal, $400.; Texas City Terminal, $14,213., a total of $1,367,086.

Q. The total other income reported for that year was $2,314,894; is that not correct? A. That is correct.

Q. If this report discloses other deductions, will you please particularize them?

A. The report indicates miscellaneous deductions of $13,684.; interest on unfunded debt, $58,647.; net income before interest on funded debt, $3,242,207.

Q. The interest on funded debt for that year was?

A. $2,396,451.

Q. Thus disclosing a net income after fixed charges of $845,756.? A. That is correct.

Q. Coming to the year 1931, what does the report of the New Orleans, Texas & Mexico disclose as to its net railway operating income? A. The report indicates $568,546.

Q. This report discloses receipt of other income?

A. It does.

Q. Please particularize.

A. The report indicates dividends received in the

amount of $4,155,079.; interest income, $1,335,025., and other income, $11,139., a total of income, $5,501,243.

Q. Would you please particularize the sources of the dividend income reported?

A. The report indicates that dividends were received from the St. Louis, Brownsville and Mexico Railway in the amount of $4,155,079.

Q. When were these dividends declared by the St. Louis, Brownsville and Mexico, according to the information that you have?

A. The report indicates that there were dividends declared June 17, 1931 and June 30, 1931.

Q. What were the dividends that were declared by the St. Louis, Brownsville and Mexico on June 17, 1931?

A. There was a dividend of $316,188.85 and another dividend—

Q. Wait a minute; just June 17. How many shares of St. Louis, Brownsville and Mexico stock were outstanding?

A. The report didn't indicate; it just indicated the par value.

Q. The par value was given at? A. $500,000.

Q. Does the report disclose, or does other information that you have seen, disclose the amount of dividends, per share? A. The report indicates the rate per cent. of 63.24.

Q. Have you examined any other records to enable you to say what the exact declaration of dividends per share was?

A. Based on the par value, the dividend was equal—

Mr. McConaughy: That is not responsive to the question, Your Honor.

The Court: Objection sustained.

Mr. McConaughy: I didn't object to the question; I objected to his answer.

The Court: Read the question.

(Question read to the Court as follows: "Q. Have you examined any other records to enable you to say what the exact declaration of dividends per share was?")

A. No, sir.

Mr. Brandwen: Q. You say there was another dividend declared in June, 1931?

A. There were two dividends declared on June 17.

Q. What was the other dividend declared on June 17?

A. It was a dividend of $338,890.88.

Q. At what rate per share was that dividend?

A. I don't know.

Mr. Brandwen: Will counsel for the Trustee stipulate that the St. Louis, Brownsville and Mexico had five thousand shares of capital stock outstanding?

Mr. Dearmont: I will be glad to get you the information. I don't have that information in my head. I will be very glad to find what they had.

Mr. Brandwen: June 17, 1931.

Mr. Dearmont: I will be very glad to get it.

Mr. Brandwen: In the interest of expedition, may the evidence show that there were five thousand shares outstanding, subject to correction?

Mr. McConaughy: What is your number?

Mr. Brandwen: Five thousand shares.

Mr. McConaughy: Subject to correction, that is all right.

The Court: Very well.

Mr. Brandwen: Q. Will you compute the first dividend that you testified to, that was declared on June 17, 1931, in the amount of $316,188.85, and state what was the amount declared on each share? It is just a matter of mathematical calculation.

A. Based on five thousand shares?

Q. Based on five thousand shares.

A. The dividend was equal to 63.23777.

Q. Would you do a similar bit of computation with respect to the second dividend which you testified to as having been declared on June 17, 1931, in the amount of $338,890.88?

A. Based on five thousand shares outstanding, it was equal to 67.77818.

Mr. Dearmont: I have verified it, and in 1931 there were five thousand shares of St. Louis, Brownsville stock outstanding, with par value of one hundred dollars per share, a total of $500,000.

Mr. Brandwen: Thank you.

Q. You testified before that there was another dividend declared by the St. Louis, Brownsville and Mexico in July, 1931? A. June 30.

Q. June 30, 1931, and the amount of that dividend was?

A. Three and a half million dollars.

Q. Mr. Delaney, coming back to the first dividend concerning which you testified as having been declared by the St. Louis, Brownsville and Mexico to the New Orleans, Texas & Mexico, in the amount of $316,188.85, and which amount was included in your statement that the dividends received by the New Orleans, Texas & Mexico in the year 1931 were $4,155,079., have you examined records which will enable you to say whether that dividend was ever paid by the St. Louis, Brownsville and Mexico to the New Orleans, Texas & Mexico? A. I have.

Q. And what do those records disclose?

Mr. McConaughy: I object to that question. He just said he examined records.

Mr. Brandwen: What I can do with respect to this, I can get the original—

Mr. McConaughy: All I want the witness to say is where he got his information.

Mr. Brandwen: Q. Where did you get the information that will enable you to state whether—that dividend was not paid?

A. At the general offices of the New Orleans, Texas & Mexico Railroad, at Houston, Texas.

Q. And, of course, you got this information from the books and records that you examined at the New Orleans, Texas & Mexico office, is that what you want us to understand? A. Yes.

Q. What do those records disclose with respect to this first dividend concerning which you testified, of $316,188.85, as to whether it was paid?

A. The records indicate that that dividend was part of a voucher, No. F-2189, that is included in the family line account.

Q. Which were? A. Unpaid at December 31, 1933.

Q. Now I ask you whether, in your examination of the original books and records of the New Orleans, Texas & Mexico, you obtained information which would enable you to say whether the second dividend concerning which you testified, to-wit, that of $338,890.88, was paid? A. I have.

Q. Will you please state what your examination discloses on that point?

A. I found that that dividend was also a part of Voucher F-2189, which was unpaid at December 31, 1933.

Mr. Brandwen: At this point, may I—taking advantage of the presence of counsel for the Trustee of the New Orleans, Texas & Mexico—ask for the production of the minutes of the St. Louis, Brownsville and Mexico road, shortly before the declaration of these dividends?

Mr. Dearmont: Do you want them right now?

Mr. Brandwen: I won't delay the examination, but I would like to have them here so if we get to it this afternoon—

Mr. Dearmont: The Board of Directors?

Mr. Brandwen: Or whatever committee acted with respect to the declaration of these dividends. So, if you get them for that year—

Mr. Dearmont: What year?

Mr. Brandwen: 1931.

Mr. Dearmont: To expedite this matter, are you going into the minutes of some other years; if so, you might as well let me get them all at once.

The Court: Where are those minutes, Senator Dearmont?

Mr. Dearmont: In the office of Mr. A. T. Coles.

The Court: They are in the city?

Mr. Brandwen: I can not answer that. I can not take time to think about this—

Mr. Dearmont: 1931?

Mr. Brandwen: Yes. Would counsel for the Trustee stipulate that the New Orleans, Texas & Mexico owned all the capital stock of the St. Louis, Brownsville and Mexico?

Mr. Dearmont: That is true.

Mr. Brandwen: If that is true—in 1931?

Mr. Dearmont: Yes.

Mr. Brandwen: And during the entire period from January 1, 1925 to the present time?

Mr. Dearmont: I think that is exactly true.

Mr. McConaughy: Down to bankruptcy.

Mr. Dearmont: That is, down to bankruptcy.

Mr. Brandwen: I will accept the emendation, and I appreciate Mr. McConaughy's correction, that beginning with March 31, 1933, the ownership of the assets of the New Orleans, Texas & Mexico passed to the Trustee of the New Orleans, Texas & Mexico. I think you are completely correct.

Will counsel for the Trustee stipulate that the New Orleans, Texas & Mexico owned all the bonds issued, and outstanding, of the St. Louis, Brownsville and Mexico, from January 1, 1925—1924 to March 31, 1933, the date of bankruptcy, and the Trustee of the New Orleans, Texas & Mexico owned all these bonds since that time?

Mr. Dearmont: January 1, 1924?

The Court: Counsel said 1925 at first and then changed it to 1924.

Mr. Brandwen: I changed it to 1924. I am talking about the New Orleans, Texas & Mexico owning stock of the St. Louis, Brownsville and Mexico.

Mr. Dearmont: If he did in January, January 1, 1924, the New Orleans, Texas & Mexico?

Mr. Brandwen: That is all I am talking about, the New Orleans, Texas & Mexico owning stocks and bonds of the St. Louis, Brownsville and Mexico.

Mr. Dearmont: That is a fact.

Mr. Brandwen: Q. Mr. Delaney, you also testified to another dividend that was declared by the St. Louis, Brownsville and Mexico on its capital stock, $3,500,000., June 30, 1931, did you not? A. I did.

Q. And from an examination of the original books of account and records, are you in a position, and if so, will you state what amount, if any, was paid by the St. Louis, Brownsville and Mexico to the New Orleans, Texas & Mexico on that dividend? You can do it in years, if that will—

The Witness: The annual reports of the St. Louis, Brownsville and Mexico Railway Company on file with the Interstate Commerce Commission indicate that at December 31, 1931, $2,500,000. was unpaid, and at December 31, 1932, $1,400,000. remained unpaid.

Q. Then you want us to understand, do you, that of the $3,500,000. dividend which was declared by the St. Louis, Brownsville and Mexico, June 30, 1931, to the New Orleans, Texas & Mexico, one million dollars was paid in the year 1931?

A. That is what the annual reports to the Interstate Commerce Commission would indicate.

Q. You state that the annual report of the St. Louis, Brownsville and Mexico, for the year 1931, discloses that, as of December 31, 1931, two and a half million dollars of that $3,500,000. declaration was still unpaid?

A. That is correct.

Q. And the report of the St. Louis, Brownsville and Mexico further discloses that the item of $2,500,000. which was still unpaid, was carried in the caption of dividends matured and unpaid? A. That is correct.

Q. Are we correct in understanding that in the year 1932, this item of $2,500,000. concerning which you have just testified, was reduced to $1,400,000.?

A. That is correct.

Q. Indicating a payment, in the year 1932, by the St. Louis, Brownsville and Mexico, on account of dividends matured and unpaid, of $1,100,000. that year?

A. That is correct.

Q. And the balance of $1,400,000., which was still unpaid, was carried in what caption in the St. Louis, Brownsville and Mexico 1932 report filed with the Interstate Commerce Commission?

A. It was carried in the caption of current liabilities, dividends matured and unpaid.

Q. Do you know from an examination of the original books of account and records, what the disposition of this item of $1,400,000. was, concerning which you have just testified?

A. I have seen information which indicates that the dividend—

Mr. McConaughy: Wait a minute. I think, Mr. Brandwen, he ought to tell us where he got that.

The Court: Tell where he saw it.

Mr. Brandwen: Q. May I show this to you, to see whether this letter refreshes your recollection or not (handing paper to the witness)?

A. The Senate Committee Report, Part 12, page 5538, Exhibit 1603.

(Last previous question and answer read to Mr. McConaughy.)

Mr. Brandwen: Q. What does that disclose?

Mr. McConaughy: I object to that question.

Mr. Brandwen: If Your Honor please, I will ask counsel for the Trustee to produce the original journal entry. It is taken from the files of the New Orleans, Texas & Mexico. It is a copy, and that copy can be corrected if there is any incorrectness in it.

What I am referring to is journal entry 27, New Orleans, Texas & Mexico Railway Company, and the original of this bears the initials of Mr. Eckert. I can ask counsel for the Trustee to produce the original, but this is an exact copy of that.

Mr. Dearmont: May I suggest that such matters as you have, that are copies of the record in possession of the Trustee, may be offered, subject to verification. It seems

it would expedite these matters, instead of asking me to stipulate.

(Here ensued discussion among counsel.)

Mr. Brandwen: I want to say that the suggestion of counsel for the Trustee is perfectly acceptable to me, if it meets with the approval of Your Honor. All these things—

Mr. McConaughy: I don't want to consent to any part of the Senate Committee Report going in the record, but I will let him testify, subject to our checking the accuracy of it.

Mr. Brandwen: I will offer in evidence the copy of Journal Entry No. 27 (Prior account record during month of March, 1936) the original of which was from the file of the New Orleans, Texas & Mexico Railway Company, and upon the production of the original we will have the original substituted for this.

Mr. Freund: Do I understand that this witness has seen every record in the books of the New Orleans, Texas & Mexico, or is he taking it from the records of the Senate Investigating Committee?

The Court: The witness may state.

The Witness: From the Senate Investigating Committee.

Mr. Freund: Then I object to that.

Mr. Brandwen: If Your Honor please, if this is a true copy of the Journal Entry and all—

Mr. McConaughy: I think that is all right.

Mr. Brandwen: All I have to do is ask for the production of it and get that in evidence as proof of what took place with respect to this $1,400,000. The fact that he found it in one item or—

Mr. McConaughy: We don't want to burden the Trustee. We will check the item and if it checks out all right it will stand.

The Court: Is that agreeable to you, Mr. Freund?

Mr. Freund: I withdraw the objection.

Mr. McConaughy: It is understood that nothing else with regard to the Senate Committee is going in evidence; just this journal entry?

Mr. Brandwen: When that question presents itself, I presume Your Honor will deal with it at the proper time. It has not yet presented itself. All I am doing is offering a copy of the Journal Entry from the original files.

Mr. McConaughy: What book is that journal entry taken from?

Mr. Brandwen: New Orleans, Texas & Mexico Journal Entry, in the books of the New Orleans, Texas & Mexico. It has on it a statement that, "I certify the above is correct", with the initials "M. E." I am not saying that the original contains that "M. E.", standing for Mr. Martin Eckert, who was auditor of the New Orleans, Texas & Mexico at the time.

I do want to say this, if Your Honor please: This is the first time Mr. Freund has honored us with a comment on this. My objection with respect to Mr. Freund's standing on the inter-company claim, is the same as the objection I addressed with respect to Mr. Kitchel.

Mr. Freund: May I inquire whether that entire document is to be marked, or just the Journal Entry?

Mr. Brandwen: Only the Journal Entry.

Mr. Freund: The rest is not going in?

Mr. Brandwen: Would anybody want to look at this?

Mr. Freund: Is that the Wheeler Report?

Mr. Brandwen: I have that report.

This has on it a statement, "I certify the above is correct", with the initials "M. E.", Martin Eckert. I don't believe the original has that statement on it it.

(Copy of the Journal Entry last referred to was marked Comstock Exhibit 22.) [See Vol. of Exs. p. 62.]

Mr. Brandwen: So that there will be no question in any

counsel's mind, may the record show that this entry, as it is contained in this (I think reading it would probably be an accommodation) recites as follows:

"To charge to profit and loss—miscellaneous debits, Account 621, balance of 1,400,000 stated in Account 722, deferred assets uncollected at December 31, 1935, representing unpaid portion of dividend on capital stock of the St. Louis, Brownsville and Mexico Railway Company declared July 11, 1931, as per letter Mr. Alexander Wylie, Director Bureau of Accounts, Interstate Commerce Commission, dated March 28, 1936, file DC-9500-X-B. Copy attached to file copy of this entry. Profit and loss—miscellaneous debits 621 $1,400,000. to the St. Louis, Brownsville and Mexico Railway Company. Dividends receivable 722 $1,400,000.

This is Journal Entry No. 27 (Prior Account) recorded during month of March, 1936."

This Exhibit 22 refers to a letter of Mr. Alexander Wylie, Director Bureau of Accounts, Interstate Commerce Commission, and I would like now to offer in evidence a copy of the letter of Mr. Alexander Wylie, addressed to Mr. Eckert.

Mr. McConaughy: I don't see that that letter bears on any issue involved here, Your Honor. He has proved that it was transferred over and not paid. What else does he want to prove?

Mr. Brandwen: Exhibit 22 expressly states that this entry is made as per the letter of Mr. Alexander Wylie. Again, this was not done out of thin air, and it is part of a journal entry.

The Court: Is that the objection; did you make an objection?

Mr. McConaughy: I made an objection to that letter. I don't see that it is material to the issues here.

Mr. Brandwen: I think it is part of the original entry.

The Court: It will be admitted, subject to the objection.

(Letter marked as Comstock's Exhibit 23) [See Vol. of Exs. page 63.]

Mr. Brandwen: Exhibit 23, for the benefit of the Court and counsel, if I may read it, it is a letter: "Interstate Commerce Commission, Bureau of Accounts, Washington, D. C., March 28, 1936. Mr. M. Eckert, Auditor, New Orleans, Texas & Mexico Railway Company, Houston, Texas. Dear Sir: Under Schedule 200-A, comparative general balance sheet, asset side", in your company's annual report to the Commission for the year 1934, an amount of $4,732,892.39 is reported against Account 717, "Interest and Dividends Receivable". It is understood that this amount included an item of $1,400,000., representing a part of a dividend declared by the St. Louis, Brownsville & Mexico Railway Company in the year 1931, and that this amount was credited to Account 513, "Dividend Income", in that year.

The text of Account 513 reads in part as follows:

"Dividends declared shall not be credited prior to actual collection unless their payment is reasonably assured by past experience, guaranty, anticipated provision or otherwise."

When this dividend was declared, your company was aware that the St. Louis, Brownsville & Mexico Railway was without funds to pay it, and even on the basis of past experience, the earnings of the company, had business continued good, would not have been adequate to make the payment until some future date. The recording of the dividend in Account 513 when declared was clearly in violation of the Commission's accounting rule hereinabove quoted.

While it is at this time too late to correct the Income Accounts, which have already been closed, it is not too late to write off the unpaid portion of this dividend through profit and loss. Please arrange to have this done in the current accounts, sending me a copy of the journal entry through which the accounting is accomplished.

In this connection you are requested to furnish this bureau with a statement showing the items comprising the current balance in Account 717, this is my comment: That is interest and dividends receivable, together with your comments supporting their classification as current

assets within the provisions of Section 7 of the Special Instructions in the classification of income, profit and loss and general balance sheet accounts.

Prompt reply to this letter will be appreciated.

Yours very truly, Alexander Wylie, Director."

And, if your Honor please, this journal entry of Comstock's Exhibit 22, followed thereon.

The Court: Who was Alexander Wylie?

Mr. Brandwen: Alexander Wylie, W-y-l-i-e.

The Court: He was—

Mr. Brandwen: He was the Director of the Bureau of Accounts of the Interstate Commerce Commission.

Q. (By Mr. Brandwen) Mr. Delaney, coming back to the year 1931, can you now state for the record how much of this dividend item of $4,155,079.00, which was reported by New Orleans, Texas & Mexico as having been received in the year 1931, in its report filed with the Interstate Commerce Commission, was paid in the year 1931?

Mr. McConaughy: Hasn't he already testified to that?

Mr. Brandwen: I think it would be very convenient to have the specific amount at one point. One can do some mathematical computing.

Mr. McConaughy: I think he specified the amount paid in 1931 and the amount paid in 1932. It is already in the record.

Mr. Brandwen: I say you can do that if you compute it mathematically. All right, Mr. Teitelbaum, help Mr. McConaughy make his objection. I would like to have that last comment in the record.

Mr. McConaughy: It is already in the record, your Honor.

The Court: It may go in.

Mr. Teitelbaum: I object to that going into the record. I didn't say that.

The Court: I didn't get that. What was that?

Mr. Brandwen: Mr. Teitelbaum said to Mr. McConaughy, "You object to that," and all I was trying to do—

Mr. Teitelbaum: I did not.

Mr. Brandwen: —was to have, for the convenience of the Court, at one central point, how much was actually received from all these dividends from St. Louis, Brownsville and Mexico, in the year 1931. Of course, it is in the record, but I think it would be very convenient to have all of those covered together and have one simple answer on that. All I am concerned with is the convenience of the Court.

The Court: He may answer.

A. One million dollars.

Q. (By Mr. Brandwen) Now, Mr. Delaney, in your examination of the books and records of St. Louis, Brownsville & Mexico, did you obtain a copy of a balance sheet, true copy of a balance sheet of St. Louis, Brownsville & Mexico as of December 31, 1930?

A. I obtained copy of the balance sheet from the annual report filed with the I. C. Commission.

Q. And you have that with you? A. I have.

Q. May I have it?

(Witness hands same to counsel.)

Mr. Brandwen: All these copies, in order to make it perfectly clear, are subject to correction, because, if Your Honor please, I have not had time to check them carefully myself, and I would appreciate it if any counsel finds any error in them, actual error in them, to call them to my attention.

The Court: I am sure they will be glad to do that.

Mr. Brandwen: I am sure they will, but I want to make that perfectly clear, they are all subject to correction.

Mr. McConaughy: What provision have you made to give us copies? How can we check these? These belong in the Court.

Mr. Brandwen: What I will try to do, Mr. McConaughy, is to see that you get a copy at the close of the hearing.

Mr. McConaughy: We would like to have a photostatic copy of that to check it. Will you make up a copy?

Mr. Brandwen: I want you to have it. I will see that you have a copy made up for your convenience.

Mr. McConaughy: That means now that we will have to compare it with the pencil piece of paper that you have.

Mr. Brandwen: Well, now, let's see, do you have any typed copy?

Mr. McConaughy: It seems to me this is dragging it out unduly.

Q. (By Mr. Brandwen) Do you have a typed copy?
A. I have a photostat of that.
Q. You have a photostate of that; fine. That simplifies the matter, doesn't it, Mr. McConaughy?

Mr. McConaughy: Yes.

Mr. Brandwen: Q. What you have given me, Mr. Delaney, is a schedule giving the balance sheet of St. Louis, Brownsville & Mexico for the years 1924 to 1932, inclusive, as reported and filed with the Interstate Commerce Commission by the St. Louis, Brownsville & Mexico Railroad?
A. That is correct.
Q. So that it covers all these years? A. Yes.

Mr. Brandwen: I offer these two pages in evidence.

Mr. McConaughy: No objection, subject to correction.

Mr. Brandwen: I will see that you get those as quickly as possible.

Mr. McConaughy: I would like to have them as soon after the close of court as possible.

Mr. Brandwen: I will see to it that you have them.

(Said papers were thereupon marked by the reporter as Comstock's Exhibit No. 24.) [See Vol. of Exs. p. 65.]

Q. (By Mr. Brandwen) Mr. Delaney, with respect to

Exhibit 24, the balance sheet of St. Louis, Brownsville & Mexico, are there any figures on this exhibit that were not in the original report filed with the Interstate Commerce Commission? Have you done any mathematical computing anywhere here? A. Yes, sir, I have.

Q. State what you have done. A. May I see it?

(Counsel hands same to the witness.)

A. I have computed the total current assets and total current liabilities for the years 1930 and 1931, and show a summary at the foot of page 1 indicating the current position.

Q. I see. All you have done is done some addition and subtraction? A. That is correct.

Q. But you haven't done anything else in our Exhibit 24? A. That is correct.

Q. Everything else is taken from the original report? A. That is correct.

Q. Filed with the Commission? A. That is correct.

Mr. Brandwen: I should like to call the Court's attention to the fact that in the year 1930, current assets as of December 31, 1930, current assets of St. Louis, Brownsville & Mexico, total current assets are stated at $1,150,522.05, and that total current liabilities of St. Louis, Brownsville & Mexico as of December 31, 1931, was $1,192,558.30. That is a net deficit in current assets of $42,036.25. In the year 1931 the total current assets on the balance sheet are stated at $901,888.34, and total current liabilities are stated at $3,426,939.79, showing a net current deficit of assets of $2,525,051.45. In other words, the current liabilities as of December 31, 1930, exceeded the total current assets by $42,036.25, and the total current liabilities exceeded the total current assets for the year 1931 by the sum of $2,525,051.45. I may come back to the minutes a little later on, if your Honor please.

Q. I don't think, Mr. Delaney, you testified yet with respect to the sources of interest received by New Orleans, Texas & Mexico in the year 1931? A. That is correct.

Q. Would you please particularize the sources of interest income?

The Court: Before you answer that question, I think it might be an opportune time for a brief recess.

(Brief recess.)

Mr. Brandwen: If your Honor please, during the recess, counsel for the Trustee produced a volume containing minutes of the Board of Directors of the St. Louis, Brownsville & Mexico and minutes of executive committees. I think it would be [simplier] if I just read these particular resolutions in, instead of having exhibits made at the moment. I am reading from page 41 of the volume, St. Louis, Brownsville & Mexico Railway Company minutes, produced at my request by counsel for the Trustee. I am quoting, "Minutes of adjourned annual meeting of Board of Directors of St. Louis, Brownsville & Mexico Railway Company, held at Houston, Texas, June 17th, 1931." The minutes bear a stamped signature, A. T. Cole, Secretary. On page 43 appears the following: "The next business brought before the meeting was a resolution authorizing the payment of a dividend on the capital stock of the company to the stockholders of record as of November 30, 1930. On motion of Director A. B. Pierce, seconded by Director J. E. Anderson, the following resolution was unanimously adopted. Resolved by the Board of Directors of the St. Louis, Brownsville & Mexico Railway Company that a dividend of $316,188.85 be and the same is hereby declared upon the stock of said company out of the surplus payable immediately to stockholders of record as of November 30, 1930. This dividend is to make an adjustment of income and operating expenses between this line and New Orleans, Texas & Mexico Railway Company, the owner of all of the capital stock of this company.

"There was then laid before the meeting a resolution authorizing the payment of a dividend on the capital stock of the company to stockholders of record as of February 28th, 1931. On motion of Director W. G. Choate, seconded by Director Frank Andrews, the following resolution was unanimously adopted: Resolved by the Board of Directors of the St. Louis, Brownsville & Mexico Railway Company that a dividend of $338,890.88 be and the same is hereby declared upon the stock of said company

out of the surplus payable immediately to stockholders of record as of February 28th, 1931. This dividend is to make an adjustment of income and operating expenses between this line and New Orleans, Texas & Mexico Railway Company, the owner of all of the capital stock of this company."

I now come to page 45 of the minutes, same volume, which recited as follows. As the legend at the head of the minutes, "Minutes of Special Meeting of Board of Directors of St. Louis, Brownsville & Mexico Railway Company held at Houston, Texas, July 11, 1931." I should like to state in this connection that what I am reading from is a copy of the minutes. The original—these are not the original minutes, these are a copy produced, and I would like to ask counsel for the Trustee whether he can't lay his hands on the original, because there may be certain exhibits that may be attached to the originals and not attached to this copy. These minutes also bear the stamp of A. T. Cole, Secretary.

"The next business brought before the meeting was a resolution authorizing the payment of a dividend on the capital stock of the company to stockholders of record as of June 30, 1931. On motion of Director C. N. Armstrong, seconded by Director A. B. Pierce, the following resolution was unanimously adopted: Resolved by the Board of Directors of the St. Louis, Brownsville & Mexico Railway Company that a dividend of $3,500,000.00 be and the same is hereby declared upon the stock of the said company out of the surplus payable immediately to stockholders of record as of June 30, 1931. This dividend is to make an adjustment of income and operating expenses between this line and New Orleans, Texas & Mexico Railway Company, the owner of all of the Capital stock of this company."

Since counsel for the New Orleans, Texas & Mexico is around here, I will take advantage of his presence by asking him whether it is not a fact that the Beaumont, Sour Lake & Western stock was fully owned by the New Orleans, Texas & Mexico, beginning at least from January 1, 1924, to these proceedings, March 31, 1933, of New Orleans, Texas & Mexico; since then the stock has been owned by the Trustee of New Orleans, Texas & Mexico.

Mr. Dearmont: That is correct.

Mr. Brandwen: And I wonder whether I couldn't get from you a record of all the subsidiaries of New Orleans, Texas & Mexico, and the amount of stock owned by New Orleans, Texas & Mexico, and the amount of bonds outstanding of those various roads and the amount owned by New Orleans, Texas & Mexico.

Mr. Dearmont: Yes, sir.

Mr. Brandwen: I know this is all of record, Mr. Wyer, but I want to have it for this hearing.

Q. (By Mr. Brandwen) Now, Mr. Delaney, at the risk of repetition, am I correct in understanding that you have not yet testified with respect to the interest source of income of New Orleans, Texas & Mexico contained in the annual report of New Orleans, Texas & Mexico for the year 1931?

A. That is correct.

Q. Would you please particularize those items now?

A. The report indicated interest income was received from St. Louis, Brownsville & Mexico Railroad Company, $774,800.00. Beaumont, Sour Lake & Western, $123,469.00. Orange & Northwestern, $64,016.00. San Antonio, [Uvale] & Gulf, $220,650.00. Sugarland, $19,200.00. Houston & Brazos Valley, $50,000.00. Houston, North Shore, $51,000.00. International, Great Northern, $16,447.00. Houston Belt & Terminal Company, $400.00. Texas City Terminal, $15,043.00. Total $1,335,025.

Q. Did you testify what the total other income of New Orleans, Texas & Mexico, as reported in the report filed with the Interstate Commerce Commission in 1931 was?

A. I did.

Q. Now, please particularize deductions disclosed by the report.

A. The report indicated there were miscellaneous deductions of $14,366. Interest on funded debt $8,596.

Q. Disclosing net income before interest on funded debt— A. Of $6,046,827.

Q. This item of $6,046,827. is arrived at by including as dividends $4,155,079., is that correct? A. That is correct.

Q. Interest on funded debt for that year—

A. Is reported as $2,498,262.

Q. And the net income reported after fixed charges for that year? A. $3,545,565—beg pardon, $3,548,565.

Q. That figure of $3,548,565. includes, does it not, a dividend of $4,155,079? A. That is correct.

Q. To the extent that these dividends were not received, that figure would have to be adjusted [correspondly], isn't that so?

Mr. McConaughy: I object to that.

Mr. Brandwen: That is purely a mathematical statement.

Mr. McConaughy: I beg your pardon, there is a lot of accounting in that. He says to the extent not received. He has not shown how the books are kept.

The Court: Objection sustained.

Mr. Brandwen: Exception.

Q. Coming to the year 1932, the report filed by the New Orleans, Texas & Mexico with the Interstate Commerce Commission discloses net railway operating income on that road of how much? A. $408,197.00.

Q. And the same report discloses, I suppose, other income? A. It does.

Q. Particularize the items.

A. The report indicates that there was interest income of $1,318,438.00, and other income of $20,140.00.

Q. There were no dividends received by New Orleans, Texas & Mexico that year?

A. The report does not indicate receipt of dividends.

Q. The total other income reported by this report amounts to— A. $1,338,578.00.

Q. Please particularize the deductions disclosed by that report.

A. The report indicates miscellaneous deductions of $18,105.00. Interest on unfunded debt of $193.00. Net income before interest on funded debt, $1,728,477.00.

Q. And the interest on funded debt for that year as disclosed by the report is what? A. $2,684,666.00.

Q. What is the net income disclosed by that report after fixed charges? A. It shows a deficit of $956,189.00.

Q. Was there a report submitted by the New Orleans, Texas & Mexico for the year 1933? A. There was.

Q. With the Interstate Commerce Commission?

A. There was.

Q. Was that for the entire year or was it broken up into a period up to March 31, 1933, and after, from April 1, 1933, to December 31st?

A. The report that was shown to us was for the combined periods, there was no separation.

Q. No separation. Well, Mr. Delaney, did you prepare any comparative balance sheet of New Orleans, Texas & Mexico Railway for any period from December 31, 1924, to December 31, 1932, based on the report filed by the New Orleans, Texas & Mexico with the Interstate Commerce Commission? A. I did.

Q. I am referring to the parent. A. I have.

Q. And do you have them with you? A. I have.

Mr. McConaughy: Have you got a photostatic copy that we may have?

Mr. Brandwen: I will see that you have a photostatic copy.

Mr. McConaughy: I would very much like to have it now if he has it. He said he had one of the other one.

Q. (By Mr. Brandwen) Have you got one with you?

A. No, I haven't sir.

Q. Are there any figures contained on the two sheets that you have just handed me, which are not contained in the original report filed by New Orleans, Texas & Mexico with the Interstate Commerce Commission? A. There are.

Q. Would you please describe the figures?

A. I have shown total current assets, and on the foot of the statement I have figured certain percentages which do not appear in the Interstate Commerce Commission's report.

Q. Those are mathematical computations, addition, subtraction and division? A. That is correct.

Q. No other computation done by you? A. No, sir.

Q. These sheets are identified as balance sheets of New

Orleans, Texas & Mexico Railroad Company, December 31, 1932, to 1924. I offer them in evidence.

Mr. McConaughy: Subject to check.

(Said papers were marked by the reporter as Comstock's Exhibit 25.) [See Vol. of Exs. p. 69.]

Q. (By Mr. Brandwen) Mr. Delaney, coming to some other reports you have examined with the Interstate Commerce Commission, what was the credit balance in the profit and loss surplus account of New Orleans, Texas and Mexico, as reported to the Interstate Commerce Commission as of December 31, 1924?

A. The report indicated a credit balance of $1,954,540.00.

Q. Now, during the period from January 1, 1925, to December 31, 1932, concerning which we have just testified, would you please state [tha] aggregate of the net credit transferred from the income account during the period January 1, 1925 to December 31, 1932?

A. They were $8,460,127.00.

Q. That is the aggregate of the items that you have just testified to as net income after the fixed charges for each of the eight years? A. That is correct.

Q. Now, were there any other additions of credit to profit and loss account of New Orleans, Texas & Mexico during that same period? A. There were.

Q. And they amounted to how much, the aggregate?

A. $62,792.00.

Q. They were a series of miscellaneous items, is that correct? A. They were.

Q. I don't want to go into details at the moment, because they are relatively small, is that correct?

A. They were.

Q. Now, there were certain deductions or charges made to this profit and loss surplus account during this same period, were there not? A. There were.

Q. And what were the principal deductions or charge?

A. For dividends declared and paid.

Q. By New Orleans, Texas & Mexico Railway?

A. That is correct.

Q. On its capital stock?

A. That is what the report indicated.

Q. How much? A. $7,267,386.00.

Q. Can you state the amount of dividends paid by year, beginning with January 1, 1925, by New Orleans, Texas & Mexico on its stock?

A. The reports I examined indicate the following amounts were paid:

Q. By New Orleans, Texas & Mexico?

A. By New Orleans, Texas & Mexico, and charged to the surplus account. During 1925, $1,038,198.00. 1926, same amount; 1927, same amount; 1928, same amount; 1929, same amount; 1930, same amount; 1931, same amount. Total of $7,267,386.00.

Q. From an examination of the original books and records of account of Missouri Pacific Railroad Company, can you state how much of these dividends was received by Missouri Pacific Railroad Company year by year?

A. I was furnished—I did not examine the accounts. I was furnished with a summary.

Q. Furnished with a summary by whom?

A. By Mr. Peet.

Q. Will you answer the question, then?

Mr. McConaughy: Let him produce the summary.

Q. (By Mr. Brandwen) Will you read from the summary?

Mr. McConaughy: Let him produce the summary. Let's see it.

Q. (By Mr. Brandwen) Read from the summary. Are there other items on the summary? A. Yes, sir.

Q. There are. That I have not asked you about?

A. Yes, sir.

Q. Will you answer the question?

A. The year 1925, $814,747.43. 1926, $916,663.78. 1927, $921,235.00. 1928, $921,550.00. 1929, $951,658.75. 1930, $970,051.25. 1931, $977,340.00. Total, $6,473,236.21.

The Court: What is the total?

The Witness: $6,473,236.21.

Q. (By Mr. Brandwen) That was the amount of the dividends paid by New Orleans, Texas & Mexico, which were received by Missouri Pacific Railroad Company?

A. I have been informed that is the amount.

Q. By Mr. Peet. Were there any other deductions or charges to the profit and loss surplus account during the period of 1925, January 1, 1925, to December 31, 1932?

A. There were.

Q. Will you please particularize that?

Mr. McConaughy: I would like to find out first where the information comes from.

Mr. Brandwen: All right, surely.

Q. From an examination of the books and records of account of New Orleans, Texas & Mexico Railway Company, can you state now whether there were any deductions or charges to profit and loss surplus account?

A. The annual reports filed with the Interstate Commerce Commission indicates there were.

Q. Would you please particularize them?

A. A mathematical computation for the period from January 1, 1925, to December 31, 1932, indicates the following: Surplus appropriated for investments in physical property, $18,057.04. Debt discount extinguished through charge to profit and loss, $814,890.15. Loss on retirement of railroad equipment, $33,889.12. Delayed income debits, $899,294.61. Miscellaneous debit to profit and loss, $313,-723.65. Miscellaneous appropriations of surplus, $215,-746.15, credit.

Q. Mr. Delaney, addressing ourselves for the moment to the larger item, will you state what is comprised within the category, debt discount extinguished through charge to profit and loss?

A. I have been informed that it represents discount on the sale of securities for New Orleans, Texas & Mexico Railroad, which were not amortized during the life of the bond issues and was charged direct to profit and loss.

Mr. McConaughy: Let's get the source of the information.

Mr. Brandwen: That is right.

Q. What is the source of your information?

A. [Th4e] annual reports to the I. C. Commission.

Q. Now, you refer to the loss on retirement of railroad

equipment, $33,889.12. That probably speaks for itself; we don't need any explanation of that. Now, you come to the next item of delayed income debit, depreciation charged direct to profit and loss. Would you please particularize that item?

A. That was a charge made direct to profit and loss after the depreciation rates were revised at the request of the Interstate Commerce Commission.

Q. So that the total charges direct to profit and loss for the period of January 1, 1925, to December 31, 1932, amount to how much? A. $9,131,494.42.

Q. Now, what was the credit balance in the surplus account as reported to the Interstate Commerce Commission as of December 31, 1932? A. $1,345,964.90.

Mr. Brandwen: Now, if your Honor please, I wonder whether this might not be as good a time and place to adjourn as any. I was going to start in on—

The Court: A very agreeable time to the Court.

Mr. Kitchel: Your Honor, would it be an unreasonable request that we could be supplied with copies of the proposed exhibits before the opening of court tomorrow morning?

The Court: It might save some time, I should think. There will be no difficulty about doing that, would there?

Mr. Brandwen: If we can do that without any great difficulty we will be delighted to do it.

Mr. Kitchel: Even if you can't do it by the time court opens, will you kindly have them for us as you offer them in evidence?

Mr. Brandwen: We will try to do that, Mr. Kitchel. I told that to Mr. McConaughy.

Mr. Kitchel: We would like them at the opening of court if we can have them.

The Court: Well, by the time we open court. Announce an adjournment until tomorrow morning at ten o'clock.

(At this point the Court announced an adjournment until tomorrow, Wednesday, January 10, 1945, at ten o'clock A. M., at which time the following proceedings were had, to-wit:)

Met, pursuant to adjournment as above, on January, 10, 1945, at ten o'clock A. M.

The Court: You may proceed in this Missouri Pacific matter.

Mr. Brandwen: If Your Honor please, Mr. McConaughy has been furnished with copies of the exhibits which were introduced in evidence yesterday afternoon.

Direct Examination of James M. Delaney

Resumed by Mr. Brandwen:

Q. Mr. Delaney, I don't believe that you testified as to the sources of interest income for the year 1932 of the New Orleans, Texas & Mexico, as reported by the New Orleans, Texas & Mexico in its 1932 report to the Interstate Commerce Commission. Will you please particularize those sources?

A. The report filed with the Interstate Commerce Commission for the year 1932, by the New Orleans, Texas & Mexico Railway indicates that interest was received from the St. Louis, Brownsville and Mexico Railway Company, of $774,800.; Beaumont, Sour Lake and Western, $123,469.; Orange and Northwestern, $64,016.; San Antonio, Uvalde & Gulf, $220,650.; Sugar Land, $19,200.; Houston & Brazos Valley, $50,000.; Houston-North Shore, $51,000.; Houston Belt & Terminal Railroad Company, $400., and Texas City Terminal, $14,903., which is a total of $1,318,438.

Q. In your examination of the original reports filed by the St. Louis, Brownsville and Mexico with the Interstate Commerce Commission, did you examine the income account for the year 1931? A. I did.

Q. Do you have a copy of it with you? A. I have.

Q. This document you have just handed me contains figures that appear on the report filed with the Interstate Commerce Commission? A. It does.

Q. Does it contain any other figures, any other computations? A. No, sir.

Mr. Brandwen: I offer it in evidence.

(The exhibit last offered in evidence was marked Comstock Exhibit 26.) [See Vol. of Exs. p. 73.]

Mr. Brandwen: Were you able to get the figures on the capitalization and the bonds outstanding of the various subsidiaries of the New Orleans, Texas & Mexico?

Mr. Dearmont: It will be here in just a few minutes. It is being typed.

Mr. Brandwen: That is all right. I will go on with something else.

In that connection, I also want to ask counsel for the Trustee whether we could not have the original copy of the Minute Book, of the various minutes that are being furnished at our request. What I have been reading from has been a copy of the minutes, furnished by you.

The reason I ask that is because these minutes refer on occasion to certain exhibits and documents, which exhibits and documents do not appear in the copy.

Mr. Dearmont: We do not have them in St. Louis. The Texas Corporation and Louisiana Corporation have their minutes in the state in which they were incorporated. We do have exact copies of them here in the Secretary's office, and that is what I furnished to you. I am advised by the Secretary, who is here in the court-room, and who has charge of all records here, that that is an exact copy of the original Minute Book.

Mr. Brandwen: There are no exhibits attached to the originals as a copy of the minutes indicate?

Mr. Dearmont: I asked Mr. A. T. Cole, the Secretary, and he told me this is an exact copy. There may be supporting documents in the file, of the railroad in Houston, that are referred to, but this is a copy of the original minutes.

Mr. Brandwen: Do I understand from that, that the original Minute Book does not contain any exhibits that are not found in the copy of this Minute Book?

Mr. Dearmont: I so understand from Mr. Cole. You may inquire of him. He is in the court-room.

Mr. Brandwen: I want to ask counsel for the Trustee whether he won't give us some more information. The St. Louis, Brownsville and Mexico Railway Company is a Texas corporation?

Mr. Dearmont: I believe so.

Mr. Brandwen: Its principal office is at Kingsville, Texas?

Mr. Dearmont: Its principal office is in Houston.

Mr. Brandwen: The St. Louis, Brownsville and Mexico?

Mr. Dearmont: That is right.

Mr. Brandwen: If you should find it is not in Houston, let me know—Houston, Texas.

I read now from the minutes of an Executive Committee meeting of the St. Louis, Brownsville and Mexico Railway Company, that bears the number 80, in the Minute Book furnished me by counsel for the Trustee yesterday afternoon.

Mr. McConaughy: I register a protest against the reading of minutes. He could have copied them last night and had them here as an exhibit.

Mr. Brandwen: I don't have a stenographic staff here. These minutes were furnished to us. We have to go through them; we didn't see them until yesterday afternoon.

Mr. McConaughy: Is there any reason why you didn't see them before yesterday afternoon? They might have been available for a long time. This case has been set for hearing since October, and it seems to me that it is a tremendous waste of time to permit Mr. Brandwen to stand there and read into the record all this material which could be covered by an exhibit.

Mr. Kirshbaum: May I be heard on that, too, Your Honor? I have sat here patiently for three days, while Mr. Brandwen goes through each paper. I think all counsel, as well as this Court, will be wanting to get through with this hearing, which was set for hearing objections to the Plan.

We have raised objections, and we feel that the Plan should be rejected. I hope that Mr. Brandwen's purpose is to do something like that, but I don't see why we should surrender this court-room to Mr. Brandwen at this late date, at this eleventh hour. I think the estate was burdened with the cost of counsel and counsel's services and expenses in conducting these hearings, and the Circuit Court of Appeals didn't seem to think that Mr. Brandwen's objections to this hearing was entitled to any special consideration.

I think Your Honor has been most fair, and more than gracious, in extending all this time, and I think it is time that he was kept within range—

Mr. Brandwen: If the Court please, may I be heard with respect to both these comments?

The Court: Very well.

Mr. McConaughy: I didn't hear that last word.

Mr. Brandwen: May I be heard with respect to the comments of both you gentlemen?

May it please the Court, I thought it was clearly understood that we would have a full opportunity and a day in court to present this matter on the merits. This is a claim involving eighteen million dollars—not eighteen cents, not eighteen dollars, but eighteen million dollars. It constitutes at least twenty-five per cent. of the claims against the estate of the New Orleans, Texas & Mexico.

We served a subpoena duces tecum on counsel for the Trustee. Counsel for the Trustee, for reasons that seemed best to him, made an application to this Court to quash that subpoena. There was a hearing on that matter last Wednesday. So far as I know, there has been no disposition of that application. But be that as it may, counsel for the Trustee has stated, both to Mr. Biggs and myself, on a number of occasions, that it would save time, it would reduce the amount of labor to which people would be subjected if, as we needed documents, we advise him of that as much in advance as possible, and he would see to it that we got those materials, so that this court-room would not be filled with a good deal of material.

Now, I acquiesced in that as far as I could, and I am proceeding on that basis.

We have not looked at these documents before; we haven't seen them. If there is a document that is pertinent and material, then, if Your Honor please, I cannot be penalized that I have not had these copied. I don't have the facilities. I can't go to the Trustee's office and take advantage of the stenographic staff there and have those things typed. We have to do this ourselves and we have very limited facilities, extremely limited.

Mr. McConaughy: Why can he not simply put that book in, for the time being, and make a copy when he gets a chance to do it, and mark that as the exhibit?

I am just thinking of expedition here. We are in wartime today.

The Court: The Court is very sympathetic to the suggestion of expedition.

Mr. Brandwen: I believe we will achieve more expedition if I am allowed to handle it this way.

What I want to read and to use in evidence is extremely important and has a very vital bearing on the whole history of these matters.

The Court: How long is it going to take?

Mr. Brandwen: To read?

The Court: Not one particular item, but all you have in mind.

Mr. Brandwen: The testimony? I have no idea.

The Court: Two or three days, or a week or three weeks?

Mr. Brandwen: I think, so far as my direct testimony is concerned, it may perhaps be another week; perhaps less. If other counsel are burdened thereby—I don't see that my friend here—if he wants to stay in St. Louis and listen to this, that is up to him. But I don't think this claim of eighteen million dollars should in any way be affected by that kind of consideration.

Mr. Kirshbaum: There is more than eighteen million dollars involved in this hearing. This railroad involves con-

siderably more than eighteen million dollars, and I think all counsel here will take, in the aggregate, far less time than Mr. Brandwen has himself so far taken on his one claim. And I may say, too, that this is all a charge against the estate, and I don't think it is fair to permit Mr. Brandwen to go on, like Tennyson's brook.

Mr. Brandwen: I asked for a separate hearing so that this matter could be separated from the objections to the Plan. Your Honor deemed it proper not to grant my application. If that had been done those people who are here on objections to the Plan would not have had to remain. They don't have to remain, even so. If it were heard as a separate hearing, only those people interested in this claim would be here.

Mr. Kirshbaum: As I understand, counsel was given an opportunity by the Interstate Commerce Commission, in its first report, before it rendered this supplemental report, to bring this matter into Court, and they had sixty days before the Interstate Commerce Commission rendered its modified plan, in which counsel could have presented these same items.

I don't impugn any other motive to Mr. Brandwen except trying to benefit this estate, but I can not see why this matter was not brought on before this. It seems to me that this eleventh hour attempt to take the whole stage and to surrender ourselves to him is a little bit unfair, to say the least.

Mr. Brandwen: I am not asking anybody to surrender anything. By the same token, I am asking that we be not required to surrender any basic rights.

I regret to say that this gentleman who just addressed Your Honor—whose name I don't have—

The Court: Mr. Kirshbaum.

Mr. Brandwen: Is not aware of what took place since the report was handed down by the Commission on July 4. If he were aware of what has taken place since the Commission handed down its report of July 4 he would not have made the statement which he made, but I will attribute that to lack of information.

The Court: Why is it necessary to read all these matters into the record, Mr. Brandwen?

Mr. Brandwen: I feel that this evidence is very vital on the question of relationship of the Missouri Pacific and New Orleans, Texas & Mexico. It is part and parcel of the domination and control.

The Court: Why take up the time of the Court and counsel by reading it all?

Mr. Brandwen: I want to read one paragraph that is such an important paragraph that I don't think Your Honor could get the full picture of this unless those things are stated in the fashion that I want to do it. I think if it just goes in without any comments on them as I read them, I don't think Your Honor would be helped.

Mr. McConaughy: I don't think counsel is entitled to make comments at this time. If he wants to sum up at the end, all right.

The Court: There is no question about that.

Mr. Brandwen: I am not going to summarize. I simply want to help Your Honor in respect to some of these things, so that Your Honor may understand just what I am trying to do, and it seems to me that that is perfectly appropriate in the trial of any case. It is not done as a mere mechanical matter, as though we put in a nickel in a vending machine and get the result—

Mr. McConaughy: I would like in this connection to have the record show that Mr. Brandwen showed the letter from Mr. Wylie, to Your Honor yesterday, for the purpose of determining whether it was admissible. Your Honor read it over, and then Mr. Brandwen proceeded to read that letter again in open court. I think that sort of procedure is wasteful.

Mr. Brandwen: If Your Honor please, that was perfectly appropriate procedure.

The Court: You have one particular part?

Mr. Brandwen: I have one particular part. If I had

read that it would have taken less time than all this discussion.

The Court: Very well; you may do that.

Mr. Brandwen: I am reading from the minutes of the meeting of the Executive Committee of the St. Louis, Brownsville and Mexico Railway Company.

"Held at office of the company, 3600 Terminal Tower, Cleveland, Ohio, at eleven o'clock A. M., April 26, 1933, pursuant to due notice.

"Present: Messrs. O. P. Van Sweringen, Chairman; L. W. Baldwin, William Wyer (Assistant Secretary)."

Mr. Brandwen: It may be stipulated in the record that Mr. O. P. Van Sweringen was the Chairman at that time, or Chief Executive Officer of the Alleghany Corporation?

Mr. McConaughy: Whom are you asking for that stipulation?

Mr. Brandwen: Anyone who is in the court-room—there are people here representing the Alleghany—if there is no objection.

Mr. Leisure: If you are addressing the question to me, I was taking care of something of my own and I was not paying attention to what you said.

Mr. Brandwen: What was the position that Mr. O. P. Van Sweringen held in the Alleghany Corporation on April 26, 1933?

Mr. Leisure: I am not sure. It has been a long time ago.

Mr. Kitchel: We don't know, Your Honor.

Mr. Brandwen: I will produce that evidence.

At this point I would like to offer in evidence a list of the officers and directors of the Alleghany Corporation for the year 1933.

(To opposing counsel) I will see that you get a copy of this in just a minute.

Mr. Leisure: May I see the exhibit?

Mr. Brandwen: Yes (handing document to Mr. Leisure). I now continue—

Mr. Leisure: Just a moment.

Mr. Brandwen: I beg your pardon. Of course, they are subject to correction—

Mr. Leisure: I assume this exhibit is offered under your proof on Objection 19?

Mr. Brandwen: It is offered in this proceeding, whatever we are proceeding under.

Mr. McConaughy: I am not prepared to admit that, unless somebody connected with the Alleghany can state that those were officers and directors at the time.

Mr. Brandwen: Your Honor, all I have done is for the purpose of simplifying the testimony. This is taken from a recognized manual, Moody's Manual. That is a manual that is used currently. I could call somebody, but that would take very much more time.

Mr. Freund: I thought Mr. Brandwen was going to read from the minutes in the book he had before him, and there is nothing in there about the Alleghany Corporation. I think all this present discussion is due to an interpolation of Mr. Brandwen.

Mr. Brandwen: I have read part of the minutes and I am going to continue with other parts of the minutes, so the record can show who these people were.

Mr. McConaughy: Your Honor has our objection to Exhibit 27.

The Court: Sustained.

Mr. Brandwen: Exception. I will have to prove it in a longer way, then.

In the minutes from that same day. Petition to the Federal Court.

"The Chairman, O. P. Van Sweringen, (who acted as Chairman of the meeting) stated that the St. Louis, Brownsville and Mexico Railway Company owes $1,400,000. accrued dividends to the New Orleans, Texas & Mexico Railway Company, which it may be compelled to pay if the Trustee of the First Mortgage of the New Orleans,

Texas & Mexico, with which the stock is pledged, demanded payment. The company has no funds with which to make such payment. In addition the company owes more than $300,000. in current unpaid vouchers and has cash of only about $130,000. and is unable to borrow or otherwise procure the balance of the fund needed.

"In the circumstances he recommends for consideration that the proper officers of this company be authorized to file in its behalf, in the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, a petition under Section 77 of Chapter 8 of the Act of Congress relating to bankruptcy, stating this company's inability to pay its debts as they mature, and it is desired to obtain the benefit of sub-section 77 by effecting a plan of reorganization in connection with and as part of the Plan of Reorganization of the Missouri Pacific Railroad Company, which filed a similar petition in said Court on March 31, 1933.

"Whereupon, after full discussion and motion duly made, seconded and unanimously carried, the following resolutions were adopted:

"Whereas, this company may be unable to meet its debts as they mature, and in the opinion of this committee it may be necessary that this company effect a plan of reorganization in connection with, and as a part of the Plan of Reorganization proposed to be effected by its proprietary company, the Missouri Pacific Railroad Company, in accordance with Section 77 of Chapter 8 of the Act of Congress relating to bankruptcy, by the filing of an appropriate petition for that purpose in the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri;

"Now, therefore, be it resolved, that the President or any Vice-President of this company be and is hereby authorized, on behalf of this company and upon advice of counsel, to sign and/or verify and file with the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, a petition substantially in the form of the petition submitted to this meeting, or one having similar effect, with such changes in form or substance as may be made by any such officer on advice of

counsel, and cause a copy thereof to be filed with the Interstate Commerce Commission."

Mr. McConaughy: I am a little confused. I think you said 1932 once and 1933 once. Kindly give us the date of that meeting.

Mr. Brandwen: The date of this meeting is April 26, 1933. If I stated at any time 1932, it was a complete inadvertence. I don't recall it, but it is clearly April 26, 1933.

I would like to point out that these minutes of April 26, 1933, bear the stamp of William Wyer, Assistant Secretary, and a statement of that "a true copy", with the signature, presumbably at least, it is written by Edwin G. Wagner, Assistant Secretary, which does not appear—

Mr. McConaughy: I don't see how important that material is. He has the main thing in. It is conceded that it is a true copy, and yet he goes on with all this material, just taking additional time.

Mr. Kitchel: If he had had it marked in evidence, Your Honor, and handed it to you to read, you could have read it in about one-tenth of the time he took, and you would be perfectly familiar with it.

Mr. Brandwen: I think it would have taken a fraction of the time it took to discuss it.

Mr. McConaughy: We are trying to see if we can not speed up the trial of this case.

Mr. Brandwen: I don't think you are doing it in the way it should be done.

Mr. Dearmont: While I represent no adversary party in this case, I would like to be of assistance in expediting this proceeding.

Had I been requested by counsel to furnish copies of these minutes of the corporation I should have been very glad to do so, and I will now undertake, if counsel will indicate at any time during the progress of the trial that he would like to have copies of any reasonable record—by "reasonable" I mean a reasonable amount of time of a

stenographic staff such as the Trustee has, I would be very glad to furnish a copy, not only to Mr. Brandwen to introduce here in evidence, but copies for other counsel. I am not attempting to interfere with Mr. Brandwen's method of proceeding with this case, but I simply offer that to whoever cares to take advantage of that.

Mr. Brandwen: Thank you.

Q. Mr. Delaney, I hand you a cash book that counsel for the Trustee produced this morning, and ask you to look at it (handing book to the witness).

You have had occasion to look at the cash book which I just handed to you, before this hearing, have you not?

A. I have.

Q. Please describe what that cash book is that you have in your hands now.

A. This is Cash Book A of the New Orleans, Texas & Mexico Railway Company, which purports to be transactions of cash received in New York during the period from April 1, 1925 to August 30th, 1930, and cash receipts and disbursements of the Cleveland office from September 1, 1930 to March 31, 1933.

Q. All, of course, of the New Orleans, Texas & Mexico Railway Company? A. So I am informed.

Q. Does the book indicate that? A. Yes, sir.

Q. What is the date of the first advance reflected in that book, from Missouri Pacific Railroad Company to the New Orleans, Texas & Mexico?

A. August 1, 1927, Missouri Pacific Railroad Company, this amount advanced by them, $25,000.

Q. Advanced to the New Orleans, Texas & Mexico?

A. This appears on the cash receipts side and reports a receipt from the Missouri Pacific Railroad Company.

Q. Is there any other advance in August, 1927?

A. On August 31, Missouri Pacific Railroad Company, this amount advanced by them, $310,000.

Mr. Brandwen: Mr. McConaughy, I have a series of checks that reflect those advances. In order not to incumber the record too much, and not delay matters, may I simply state how the check was signed and endorsed?

(Here ensued private colloquy between Mr. Brandwen and Mr. McConaughy.)

Mr. McConaughy: Why can we not get together and stipulate?

Mr. Brandwen: No, we are not going to stipulate that, because there are many questions about that.

Mr. McConaughy: You want to mark and identify—

Mr. Brandwen: Instead of offering all these checks I want to state that there was a check covering that, signed by someone, and endorsed by someone.

Mr. McConaughy: All right, if you will let us see the checks.

Mr. Brandwen: Certainly.

The $25,000. advance from the Missouri Pacific to the New Orleans, Texas & Mexico is represented by the check of August 1, 1927, check drawn on Guaranty Trust Company, New York, signed by H. L. Utter, Treasurer, and endorsed for deposit to American Exchange Irving Trust Company, New Orleans, Texas & Mexico, H. L. Utter, Assistant Treasurer, and the $310,000. item, to which the witness just testified, is drawn on the same bank, by Mr. Utter, as Treasurer, and endorsed by Mr. Utter as Assistant Treasurer.

Q. Now, were there any disbursements from this account in the month of August, 1927?

A. The cash book indicates there were.

Q. What were they?

A. August 1, 1931, Kuhn-Loeb Company, Bankers, for New Orleans, Texas & Mexico, Equipment Trust Series C, deposit made in connection with the payment of the following equipment: American Locomotive Company, two switch locomotives, $23,679.35. Four baggage cars—

Mr. McConaughy (to the witness): Did you not say August 1, 1931

The Witness: August 1, 1927. Four baggage cars, $20,743.72, and on August 31, five steel chair cars, $40,821.32.

Mr. Brandwen: Q. Was there any other disbursement during that month, in that account?

A. A number of minor other items, which comprise items such as the—

Mr. McConaughy: I object to all this detail. It is not necessary. It has nothing to do with the case at all, that they bought some steel cars.

Mr. Brandwen: I am perfectly willing, if that is agreeable to you, Mr. McConaughy, to simply state "equipment" and not have the details.

Mr. McConaughy: State the sum.

Mr. Brandwen: I am perfectly willing to do that, because I think your suggestion is sound, and I am willing to have it done on that basis. I just didn't want any question raised because he was reading from the original book record.

Q. You say there were other small disbursements?

A. American Exchange Irving Trust Company, dividend account, dividend 1-¾ per cent. on 148,329 shares N. O. T. & M. stock payable September 1, 1927, $259,575.75.

Mr. Brandwen: As reflecting the last payment, may I have the record to show there was a check in the amount of $259,575.75, which bears an endorsement on the back of it—

The Witness: For deposit American Exchange Irving Trust Company dividend account H. L. Utter.

Q. There were some other minor receipts, in the month of August, in that account? A. There were.

Q. What was the balance in that account on August 1, 1927? A. The books indicate $33,904.39.

Q. The receipts concerning which you testified, during that month— A. They total $335,608.88.

Q. And the total disbursements for the month were?

A. $345,891.73.

Q. You have already stated what the balance in this account was at the beginning of the month. What was the balance in the account at the end of the month?

A. The balance at the end of the month indicated $23,621.54.

Q. Were there any advances made in the month of September, 1927, and state what advances, if any?

A. Missouri Pacific.

Q. They were from the Missouri Pacific to the New Orleans, Texas & Mexico?

A. The record indicates on September 15, 1927, the Missouri Pacific Railroad Company advanced this amount, $590,000.

Mr. McConaughy: May I inquire how many of these months you are going to take month by month this way?

Mr. Brandwen: I wanted to deal with the advances as they appear on the books of the company.

Mr. McConaughy: I simply ask how many of these months there are that you were going to deal with.

Mr. Brandwen: There will probably be five years.

Mr. McConaughy: Month by month?

Mr. Brandwen: There are some months in which there were no advances.

Mr. McConaughy: Are those photostatic copies of this that you have there?

The Court: Is there not some way, if you have that many months to cover, that would suit your purpose and at the same time shorten this considerably?

Mr. Brandwen: I am perfectly willing to try that, if, for example, these gentlemen will stipulate what the cash balance of this account was at the beginning of the month, what the advances of the Missouri Pacific were during the month, what other receipts there may have been in that account during that month.

Mr. McConaughy: You ask Mr. Delaney to prepare tables from this record, showing exactly what you want to show, in the form of an exhibit, and we will take it and you can put it in the record, and it will save all this time.

The Court: It will save considerable time.

Mr. Brandwen: There are certain matters that we have not gotten any data on, that I would like to inquire about. We have not been able to get any data, in connection with these receipts and disbursements—

The Court: Would that prevent you from adopting the suggestion of Mr. McConaughy?

Mr. Brandwen: We can not make it completely unless we have the additional material with respect to those.

Now, if your Honor feels that we should sit down and prepare such a schedule, if it is agreeable with counsel we are perfectly willing to take a couple of hours off, get a schedule ready and see how far we can get, and then supplement that by additional material.

Mr. McConaughy: I think that would save a great deal. The stenographer has taken all this down at a great deal of expense for a transcript. I don't see any use of putting it all in.

Can we take that up later this afternoon?

Mr. Brandwen: No. I want to go along with as orderly testimony as I can.

I make that suggestion, that we take a couple of hours off at this time and we can get that material up.

(To the witness) Do you think it can be done in a couple of hours?

The Witness: Yes.

Mr. Brandwen: As long as Mr. McConaughy is not raising any question about the fact that we are taking these from the record—

The Court: Then we will adjourn at this time until two o'clock?

Mr. McConaughy: That is all right. We won't bother to check it now. Let him put it in, and accept it subject to check.

The Court: Announce a recess until two o'clock.

At this point, at eleven o'clock A. M., a recess was had until two o'clock P. M.

JAMES M. DELANEY,

having been previously sworn, and resuming the stand, testified further as follows:

Direct Examination (Continued)

By Mr. Brandwen:

Mr. Leisure: May it please your Honor, this morning before the adjournment, Mr. Brandwen asked me to concede that Mr. Van Sweringen was the chairman of the board of Allegheny in 1933. I didn't know at the time, and in open court I hesitated to make such concession. However, over the period of the noon hour I have checked it and I have found that he was not chairman of the board in 1933, but I want to check it further, and if Mr. Brandwen will give me a list of any lawyers such as this exhibit that he has, I mean any directors that he wants to show their position as officers, I will be very happy to take it and check it, and if it is correct, we will interpose no objection, and I have spoken to Mr. McConaughy and he says if they are correct, he has no objection, either, so there will be no objection to that kind of exhibit, or if it interferes with the orderly proof that he wants to put in, if he wants to put the exhibit in, subject to our having the right to correct, then I shall have no objection to it.

Mr. Brandwen: Since Mr. Leisure was good enough to do a little investigating work in the noon hour, did he determine from his investigation as to what office Mr. O. P. Van Sweringen occupied in the Allegheny Corporation in April, 1933?

Mr. Leisure: Yes, sir, my information is, Mr. Brandwen, that he was president.

Mr. Brandwen: Then, let the record show that Mr. O. P. Van Sweringen was president of Allegheny Corporation April 26, 1933, the date as of which the meeting of St. Louis, Brownsville & Mexico was held.

Q. (By Mr. Brandwen) Mr. Delaney, in connection with the proof of claim which is marked Comstock Exhibit 1, for identification, did you make an examination of the

original cash book that was furnished by the Trustee of New Orleans, Texas & Mexico?

A. I made an examination of the New York and/or Cleveland Assistant Treasurer cash book of the New Orleans, Texas & Mexico Railroad.

Q. And based on your examination, did you prepare any schedule thereon? A. I have.

Q. And do you have that schedule with you? A. I have.

Q. Would you please state to the court the substance, by categories, that you made of that schedule?

A. The schedule that I have prepared from the New Orleans, Texas & Mexico Railroad Company cash book A, I made certain extracts in regard to receipts and disbursements recorded therein. This extract shows the month, the balance at the beginning of the month, the amount received from the Missouri Pacific at the beginning of the month, the amount received from others during the month, miscellaneous receipts by the assistant-treasurer at New York or Cleveland, it shows the total receipts during the month, it shows the total balance available during the month. The disbursements show the check number where available, the amount of disbursements, the payee, and a brief description covering what the disbursement was made for.

Q. Is there anything contained in this schedule that does not appear in the original book from which you have prepared this schedule?

A. Yes, sir, on the last sheet there is a summary.

Mr. Brandwen: I offer these in evidence.

Mr. McConaughy: I make no objection, if your Honor. If there are any mistakes in it, we will call them.

Mr. Brandwen: That is always understood.

Mr. McConaughy: And I take it, we will have a copy of that this evening.

Mr. Brandwen: We will have this photostated, try to have this photostated at the office of the Missouri Pacific at the close of the session. Mark this as our next exhibit.

(Said paper was thereupon marked by the Reporter as Comstock's Exhibit No. 27.) [See Vol. of Exs. p. 75.]

Q. This is the only copy you have, isn't it?

A. That is correct.

Q. I am going to inquire about a few of these items.

Mr. Brandwen: Would your Honor like to look at it?

The Court: Yes.

(Mr. Brandwen hands same to the Court)

Q. Without going into detail, just take one month as an illustration simply for convenience, I have it before me, and I just want only one month to illustrate the point, if your Honor please. Please state what was the balance remaining, I am simply taking this as an illustration, in the beginning of the month of February, 1930.

A. The cash book indicated a balance of $13,565.35.

Q. State the receipts dividing them between those from Missouri Pacific and other sources.

A. The books indicate $260,000 was received from Missouri Pacific, and $311.14 from miscellaneous sources.

Q. And state what the disbursements were during that month from that account?

A. During that month check 1481, in the amount of $259,575.75 was issued to the Irving Trust Company, dividends account. The explanation in the cash book is it was a dividend of 1¾% on the N. O. T. M. stock. There were sundry miscellaneous disbursements of $448.93, or a total for the month of $261,024.68.

Q. And there were many other entries of comparable character in other months throughout the period in this schedule?

A. That is correct. They are described as miscellaneous disbursements.

Q. And as I say, the analysis of receipts and disbursements which you gave in the month of February is found repeated in a number of instances throughout this schedule? A. That is correct.

Mr. Brandwen: The counsel for the Trustee has produced a series of checks and I had a schedule prepared for the convenience of the Court and counsel. They are checks drawn by the Missouri Pacific Railroad Company, to New Orleans, Texas & Mexico Railroad Company, on

the Guaranty Trust Company, and the schedule shows the date of the check, the number of the check, the amount, by whom it is signed and whom it is endorsed by, and a few notes explaining certain special cases. Instead of offering these checks, I would like to have offered this schedule. They don't cover all the advances, but they just cover checks that were given to us for this period.

Mr. Kitchel: Were those checks cashed?

Mr. Brandwen: They were endorsed; they were deposited.

Mr. Kitchel: They went through the account?

Mr. Brandwen: I assume so. The checks show they were endorsed. I assume they went through the account. They bear the usual stamp. I thought it might be simpler to do it this way.

Mr. McConaughy: It is all right, Your Honor; subject to our objection, it may go in.

Mr. Brandwen: Mark this in evidence.

(Said paper was thereupon marked by the reporter as Comstock's Exhibit No. 28.) [See Vol. of Exs. p. 83.]

Mr. McConaughy: May I inquire, Mr. Brandwen, that is all you want with the checks, is it? We will have access to them?

Mr. Brandwen: Oh, certainly, we got them from the trustee; of course. All I say is these are the only checks that we received from the trustee during this period.

Mr. McConaughy: That is all right; I haven't any doubt but what it is correct. We just want to make sure.

Q. (By Mr. Brandwen) Now, Mr. Delaney, I believe that in the month of November of 1930, there were certain advances recorded on the books from the Missouri Pacific to New Orleans, Texas & Mexico. Would you please state the items relating thereto on the cash book?

A. November, 1930, receipts indicate $300,000. was received from the Missouri Pacific.

Q. Does the cash book indicate when a check was issued

by Missouri Pacific to New Orleans, Texas, Mexico, for that item? What does the entry indicate in the cash book?

A. Will you please re-read the question?

(Last question read.)

A. The cash book shows a receipt of $300,000.

Q. I show you copy of a letter and ask you whether you have ever seen this before? A. Yes, sir.

Q. You have? A. Yes, sir.

Q. And that is a letter written, copy of a letter written by Mr. William Wyer, Treasurer, on Missouri Pacific Railroad stationery, to Mr. J. P. Morgan & Company, November 26, 1930. It says, among other things: "This will serve as your authority"—

Mr. McConaughy: Wait a minute.

Mr. Kitchel: It isn't in evidence yet.

(Mr. Brandwen hands same to Mr. McConaughy.)

Mr. McConaughy: Okay.

Mr. Brandwen: I offer this in evidence.

(A paper was then marked by the reporter as Comstock's Exhibit No. 29.) [See Vol. of Exs. p. 84.]

Mr. Brandwen: Would your Honor like to see this letter?

The Court: Yes.

(Mr. Brandwen hands same to the Court)

Mr. Brandwen: I would like to call your Honor's attention to the item that says: "This will serve as your authority to charge against the above account on November 29, 1930, credit New Orleans, Texas & Mexico $300,000."

Q. Going to December, 1930, does the cash book indicate issuance of a check by Missouri Pacific to New Orleans, Texas & Mexico with respect to any advance during that month?

A. The cash book of New Orleans, Texas & Mexico indicates receipt of $50,000 from Missouri Pacific.

Q. I show you this letter and ask you if you have ever seen this before?

A. I have seen a copy of this letter before.

Mr. Brandwen: I just have some notes on this one. May I just offer the other one?

(Handing same to Mr. McConaughy)

I would like to offer that in evidence.

Mr. McConaughy: No objection.

Mr. Brandwen: Mark this as an exhibit.

(Said paper was marked by the Reporter as Comstock's Exhibit No. 30.) [See Vol. of Exs. p. 85.]

Q. Would you please state what other receipts there were in this cash account in the month of December, other than those from Missouri Pacific, that are not very trifling? A. May I see the cash book, please?

Q. Don't you have the cash book with you? A. No, sir.

Q. You don't?

Mr. McConaughy: Will you state what year?

Mr. Brandwen: 1930.

The Witness: December 6th the book indicates receipt from the Railway Express Agency, express receipts as per check book memorandum, $18,737.00, and the 22nd of December, Railway Express Agency, Incorporated, express receipts as per check book memorandum, $14156, and on the 29th, ditto for $2020.10. There were interest on the balances of the Guaranty Trust Company, and—

Q. I don't want to ask you about the minor items, disregard those very minor items. Coming to January, 1931, does the cash book indicate any advances from Missouri Pacific Railroad to New Orleans, Texas & Mexico, in the form of a check?

A. The cash book indicates receipt here of $247,750.

Q. And it doesn't state whether that was in the form of a check or not? A. No, sir.

Q. I show you this letter and ask you if you have ever seen this before?

A. I have seen copy of this letter attached to check

stub, No. 10948, Guaranty Trust Company book numbered with check stubs numbered 10,501, to 11,000.

Q. This is a letter from—

Mr. McConaughy: Wait a minute. Do you have a copy of it?

Mr. Brandwen: I am going to give you a copy of it.

Mr. McConaughy: I want it before you start reading it.

Mr. Brandwen: I am not going to read it, I just want to state whom it is from. This is a letter from William Wyer, Treasurer, Missouri Pacific Railroad Company, to J. P. Morgan, dated January 28, 1931. Offer this in evidence.

Mr. McConaughy: It is all right with the exception of the last two lines of the exhibit, which are not on the original.

Mr. Brandwen: All right.

Mr. McConaughy: You can leave it on, but the record shows that they are not offered, is that right?

Mr. Brandwen: No, he just stated where he saw it. If you want them off, that is all right.

(Said Letter was thereupon marked by the Reporter as Comstock Exhibit No. 31.) [See Vol. of Exs. p. 86.]

Mr. Brandwen: May the record show that Mr. Wyer is in the court room and is examining the copies of these exhibits before they are being offered for evidence.

Q. Now, coming to March, 1931, will you look at the cash book and see whether the cash book indicates that advance from Missouri Pacific Railroad Company to New Orleans, Texas & Mexico, in that month, was represented by a check, or evidenced by a check?

A. The cash book indicates receipt from Missouri Pacific Railroad Company, on the 31st of March, in the amount of $925,000.

Q. I show you this letter and ask you whether you have seen this, or a copy thereof, before?

A. I have seen a copy of this letter.

Mr. Brandwen: This is a letter from Missouri Pacific Railroad Company, William Wyer, Treasurer, to J. P. Morgan & Company, dated March 25, 1931. I offer it in evidence.

Mr. McConaughy: No objection.

(Said letter was thereupon marked by the Reporter as Comstock Exhibit No. 32.) [See Vol. of Exs. p. 87.]

Q. (By Mr. Brandwen) I show you this letter and ask you whether you have seen this or a copy thereof before?

A. I have seen a copy of this letter before, attached to Guaranty Trust Company stub No. 10972 of Missouri Pacific Railways check stub book.

Q. In the month of September, 1931, does the cash book disclose any advances from Missouri Pacific to New Orleans, Texas & Mexico? If so, in what amount?

A. The cash book of the New Orleans, Texas, Mexico Cleveland office indicates on September 30th, the Missouri Pacific Railroad Company advanced this amount at 5%, $850,000.

Mr. Brandwen: I wish to offer in evidence now a letter from Mr. Wyer to J. P. Morgan, dated September 25, 1931.

Mr. McConaughy: No objection.

(Said letter was thereupon marked by the Reporter as Comstock Exhibit No. 33.) [See Vol. of Exs. p. 89]

Q. (By Mr. Brandwen) Coming to October, 1931, does the cash book evidence any advance from the Missouri Pacific to the New Orleans, Texas & Mexico? If so, in what amount?

A. The cash book of the Cleveland office indicates that on October 31, 1931, the Missouri Pacific advanced this amount at 5%, $125,000.

Q. I show you this letter, and ask you whether you have [——] this, or a copy thereof?

A. I have seen copy of this letter attached to stub No. 10975 of Guaranty Trust Company, check stub book of Missouri Pacific.

Mr. Brandwen: I wish to offer in evidence letter written

by Mr. William Wyer, Treasurer, Missouri Pacific Railroad Company, to J. P. Morgan on October 24, 1931.

Mr. McConaughy: There is a typographical error there, Mr. Brandwen. They don't add up.

Mr. Brandwen: Well, now, then,—

Mr. McConaughy: It must be a mistake in the the copying.

Mr. Brandwen: Well, we will check this and have it corrected, subject to correction.

Mr. McConaughy: All right.

Mr. Brandwen: As all the others are.

Mr. McConaughy: That, we are pretty sure, is wrong.

Mr. Brandwen: Yes, that is.

Mr. McConaughy: You will see that it is corrected?

Mr. Brandwen: Yes, I will see that that is corrected.

(Said paper was thereupon marked by the Reporter as Comstock Exhibit No. 34.) [See Vol. of Exs. p. 90.]

Mr. Brandwen: The error in addition or subtraction there made a zero for a six, but I won't take the time right now to calculate it.

Mr. McConaughy: It is a million off.

Mr. Brandwen: It doesn't affect the amount of the advance in any way. I might as well have it corrected right now. May I change it in pencil? It should be a 3 instead of a 2. The item up above is correct. And change their copy, too.

Q. Now, coming to March, 1932—

Mr. McConaughy: May I interrupt just a second? With respect to copies of these exhibits, it appears that there may have been omitted the initials of the dictator of the letter, and if we wish to put those on, I assume there will be no objection.

Mr. Brandwen: I would be delighted to have them, be-

cause I notice in some of the letters we have them, and on others we do not. But certainly I would like to have them on myself. That is quite satisfactory if you will let me have them. I will be delighted to supplement these exhibits.

Mr. McConaughy: You have access to them and can correct them. Go right ahead. They are your exhibits.

Q. (By Mr. Brandwen) Coming to March, 1932, does the cash book evidence any advance from Missouri Pacific Railroad to New Orleans, Texas & Mexico? If so, in what amount?

A. The cash book does not indicate an advance during the month of March.

Q. Does it indicate any advance in the month of April?

A. The cash book indicates on April 1, the Missouri Pacific Railroad Company, advanced a certain amount at 6%, $925,000.

Q. I show you this letter and ask you whether you have seen this, or a copy of it before?

A. I have seen a copy of this letter before.

Mr. Brandwen: I wish to offer in evidence letter written by Edwin G. Wagner, Assistant Treasurer, to J. P. Morgan & Company, March 28, 1932. I assume, Mr. Wagner, I am told he is in the room.

Mr. McConaughy: I have no objection, subject to check.

(Said letter marked by the Reporter as Comstock Exhibit No. 35.) [See Vol. of Exs. p. 91.]

Q. (By Mr. Brandwen) I now come to September, 1932, and ask you whether the cash book evidences any advance from Missouri Pacific to New Orleans, Texas & Mexico in the month of September, 1932?

A. The cash book does not indicate an advance received from Missouri Pacific in September.

Q. Is there one in October, 1932?

A. The cash book indicates on October 1, 1932, Missouri Pacific Railroad Company advanced this amount at 6%, $800,000.

Q. I show you this letter and ask you if you have seen this, or a copy of it before?

A. I have seen copy of this letter.

Mr. Brandwen: This letter purports to be written by Mr. William Wyer, Treasurer, Missouri Pacific, to J. P. Morgan & Company, September 26, 1932. I offer it in evidence.

Mr. McConaughy: No objection.

(Said paper was marked by the Reporter as Comstock Exhibit No. 36.) [See Vol. of Exs. p. 92.]

Mr. Brandwen: Coming to your summary—

Mr. McConaughy: Are you through with these advances?

Mr. Brandwen: No, no, I am dealing with the exhibits.

Mr. McConaughy: I mean are you through with the Missouri Pacific advances to the N O T M?

Mr. Brandwen: No.

Mr. McConaughy: This is all the advances you want to prove, is it?

Mr. Brandwen: No.

Mr. McConaughy: Some more advances?

Mr. Brandwen: Well, this exhibit deals with advances. That is the purpose of the exhibit. I dealt with those that were not reflected by checks as exhibited by the letters.

Mr. McConaughy: The exhibit does not show all the advances.

Mr. Brandwen: May I make it clear, Mr. McConaughy, from the very beginning?

Mr. McConaughy: What I am getting at here is, you have gone through and had him testify to each one of a number of advances, all of which could have been put in one sheet of paper, together with each of these documents, and they could have gone in as one exhibit in two minutes, while you have taken practically an hour to do it. I just want the record to note our protest.

Mr. Brandwen: Well, will the record show that it is now five minutes of three. We started proceedings this afternoon either 2:15 or 2:20. We introduced the exhibits, and discussed exhibits before we got to these letters. Let the record show that, so far as time is concerned. I think that if we are going to have anything in the record at least with respect to a matter as simple as that we could have a much closer approximation.

The Court: Mr. McConaughy suggests a question to the court, and that is, why is it necessary to do this in this way?

Mr. Brandwen: Well, the exhibit that was introduced, which is No.—what is that number?

The Witness: 27.

Mr. Brandwen: Well, you have it. 27?

The Witness: That is right.

Mr. Brandwen: Is a record of all advances made by Missouri Pacific to New Orleans, Texas & Mexico, as they appear in the cash book for the period covered by the claim in question, all of them as they appear in that cash book.

Now, the advances were divided into two categories. There were checks for some advances, and there were these letters for others. I gave an exhibit with respect to those checks that were given to us for this period in question, and I supplemented that with these letters with respect to those advances that are not evidenced by checks, and those letters are very important, as showing how that was done.

Mr. McConaughy: Mr. Brandwen has been in this case before this. He ought to know the record. Everyone of these advances is listed in one document already in the record before this court. He is completely duplicating information that is already in the record.

Mr. Brandwen: If your Honor Please, I challenge Mr. McConaughy to establish these advances.

Mr. McConaughy: Everyone of these advances that he

has enumerated here today appear on an exhibit in this court record now that was taken before the commission. I will name it, it is No. 226. Now, all those letters could have been bunched together and put in one exhibit and put in here. It is just a dragging out process. There is no excuse for it, I think, your Honor.

Mr. Brandwen: If your Honor please, I want to state as clearly as I know how that this evidence that we have in exhibit 27 offered this afternoon—

Mr. McConaughy: I am not even talking about Exhibit No. 27.

Mr. Brandwen: If your Honor please, may I be permitted to finish my statement without interruption from Mr. McConaughy? If your Honor please, I will repeat that the evidence contained in Exhibit 27, which we have offered this afternoon is not contained in any document that has ever been submitted to this Court, or to the Commission. I am not saying that some items contained in that exhibit have not been submitted to the Commission, certainly some were. I say this is the first time that any exhibit has been offered in connection with these proceedings which contain—the evidence which is contained within the four walls of Exhibit 27,

Mr. McConaughy: I say that Mr. Brandwen might as well discuss the war in China, because I haven't even mentioned Exhibit 27. That went in. I was happy to see him put it in that way. What I have objected to is this: asking the witness to enumerate each and every one of these advances, which already appear in an exhibit filed in this court, and then offering in evidence separately each letter, taking up all of that time. There is no excuse for it.

Mr. Brandwen: If your Honor please, I repeat the information and material that has been offered to your Honor this afternoon has not appeared before the Commission and was not submitted to your Honor at any time. I know the exhibits they have reference to, and it is because I understand that exhibit very well, that I felt it was necessary to have this information so that there would be no question as to what the facts are.

The Court: It is difficult for the Court to know just what is contained in various exhibits. You may proceed.

Mr. Brandwen: Thank you.

Q. Mr. Delaney, coming back to Exhibit 27, have you a total of all the advances made by Missouri Pacific to New Orleans, Texas & Mexico?

Mr. McConaughy: Now, isn't that fact in the record?

Mr. Brandwen: That is. I am just asking one question so that your Honor may have in one convenient answer in one place, just what the total figure is.

The Court: It is already there.

Mr. McConaughy: You have put it in the record.

Mr. Brandwen: If your Honor is not interested in getting that figure right now, I will pass it by. The total is in there, but my thought was that you might have this figure a little more clearly. I just wanted to do that for your Honor's convenience. It is there, that is true.

The Court: Very well. He may answer.

A. Total advances through the New York and/or Cleveland Treasurer's cash book—

Q. (By Mr. Brandwen) According to that exhibit?

A. According to that exhibit, yes, $9,531,750.

Q. Does that exhibit disclose any repayments, from New Orleans, Texas & Mexico, to Missouri Pacific? A. Yes.

Q. In what amount? A. Amount of $364,000.

Q. So that the total net advances from Missouri Pacific to New Orleans, Texas & Mexico, disclosed by Exhibit 27 is? A. $9,167,750.

Q. Now, Mr. Delaney, did you examine any other books to determine whether there were any other—any other original books of account and records of the Missouri Pacific, or New Orleans, Texas & Mexico, to determine whether there were any other advances from Missouri Pacific to New Orleans, Texas & Mexico? A. Yes.

Q. Will you state what they were, please?

Mr. McConaughy: Aren't those advances in the record?

Mr. Brandwen: In what record?

Mr. McConaughy: The record before this Court?

Mr. Brandwen: No. You read those exhibits, Mr. McConaughy, and see just what is in the record. You will find it is quite a different story.

Mr. McConaughy: You are asking him merely as to what advances there were. The whole list of advances are in the record.

Mr. Brandwen: If your Honor please, I want to state again as clearly as I know how that not up to this point is there any evidence, any document that gives a true picture of the advances of Missouri Pacific to New Orleans, Texas & Mexico, no matter how much protesting may be uttered by my friend, and when an examination is made, if they choose to offer anything, and if your Honor admits it, then your Honor will see quite clearly what is involved.

The Court: Is there anything before the Court?

Mr. Brandwen: There is something, but I didn't know whether there was an objection or not.

The Court: I don't know either.

Mr. McConaughy: I am just protesting, Your Honor, at this repetition.

Mr. Brandwen: If your Honor, please—

The Court: Go ahead.

Q. (By Mr. Brandwen) Will you answer?
A. Will you repeat the question, please?

(Question read.)

Mr. Brandwen: That is in addition to those listed on Exhibit 27? A. Yes.

Q. Will you state what they were?

A. The Missouri Pacific records, and the New Orleans, Texas & Mexico records indicate that on April 30, 1932, there was an advance of $100,000 made directly to N O T M, and that is all during that period covered by the exhibit.

Q. Now, do any other—have you in the course of your examination of other books of account and records of Missouri Pacific, and N O T M ascertained whether there were any repayments from New Orleans, Texas & Mexico, to Missouri Pacific, in addition to the repayments covered by Exhibit No. 27? A. There are.

Q. Would you please give the dates and amounts of those repayments?

A. The New Orleans, Texas & Mexico local treasurer's records indicate that on June 30, 1930, $500,000 was repaid. On March 31, 1931, $8800.00. August 31, 1931, $200,000. October 31, 1931, $75,000. December 31, 1931, $100,000. February 29, 1932, $300,000, and August 31, 1932, $225,000. A total of $1,408,800.

Q. Now, if you will just engage in a simple bit of arithmetical computation by adding to the summary of the exhibit the additional amounts to which you have just testified and deduct therefrom the additional repayments that you have just testified to, what figure do you arrive at as total net advances from Missouri Pacific to New Orleans, Texas & Mexico, during that period? A. $7,858,950.

Q. Mr. Delaney, I now come to Comstock Exhibit 25, which was offered in evidence yesterday, and I call your attention to an item, a category in that exhibit called unadjusted debits, and there are two items underneath that category of unadjusted debits as of December 31, 1932, one called rents and insurance premiums paid in advance, $18,200, and the other called "Otner unadjusted debits" of $16,101,497., is that correct? A. That is right.

Q. Do you have this information in any other schedule?

A. No.

Q. What is this item of unadjusted debits? Is there any category in the Interstate Commerce Commission accounting regulations that deals with unadjusted debits or defines unadjusted debits? A. There is.

Q. Would you please let us have it?

A. I am reading from the uniform system of accounting for steam railroads, accounting classifications governing investments and road equipment, operating revenues and expenses, prescribed by the Interstate Commerce Commission which is published by the American Association of—

Mr. McConaughy: How long is this going to be? Isn't that a published document that you can get a hundred copies of?

Mr. Brandwen: Yes. I wanted to have the record show what "other unadjusted debits" are.

Mr. McConaughy: You can put the document in evidence.

Mr. Brandwen: All I want to read one paragraph. I thought the court ought to know from what the witness is reading.

Mr. McConaughy: The court can read the exhibit.

Mr. Brandwen: But from what is being read, just what it is, I want to excerpt one paragraph from there.

The Court: Proceed.

The Witness: Containing publishers notes, "The contents of this volume have been verified by the Bureau of accounts of the Interstate Commerce Commission with authentic records of the Commission." On page 224, paragraph No. 727, other unadjusted debits.

Mr. Brandwen: Just a minute. May I change that?

Mr. McConaughy: Did he identify the document from which he was reading?

Mr. Brandwen: Yes, that is the document he was reading from.

Mr. McConaughy: I would like to have the document identified.

Mr. Brandwen: All right. This is an accounting classification issue. It is prescribed by the Interstate Commerce Commission.

Mr. McConaughy: It is important to have the date, Mr. Brandwen.

Mr. Brandwen: Yes, I know. I am going to get back to the date. What we have here is one effective January 1, 1943. We will come to that.

Q. Now, I would like to ask you this question: Do these Interstate Commerce Commission regulations have any category known as "Other unadjusted debits"?

A. They do.

Q. And would you please read into the record how the Interstate Commerce Commission defines other unadjusted debits?

Mr. Brandwen: I want to say at this point, if your Honor please, we don't have a copy as of December 31, 1932. We will try to get a copy; if there is any change in that definition, I would appreciate it if counsel on the other side—

Mr. McConaughy: You don't know whether there is any change, is that it, you are assuming there is no change?

Mr. Brandwen: I myself don't know.

Mr. McConaughy: Why don't you ask the witness?

Q. (By Mr. Brandwen) Do you know whether there has been a change in the definition of other unadjusted debits between 1932, and the present time? A. I don't know.

Q. Will you read—

Mr. McConaughy: What is the use of reading it? How do you know it is in force, was in force at the time? I object to it as being not proved in effect at the time that is in controversy here.

Mr. Brandwen: Your Honor, we have people, I am sure, from the auditing staff of the Missouri Pacific, and New Orleans, Texas & Mexico, who might perhaps answer that question. I don't want to interrupt this witness, but if we are to go on, I would like to ask one of those employees of the trustee to answer that if he can.

The Court: Objection sustained.

Mr. Brandwen: Exception. I would like to ask counsel for the trustee whether in your records you have a copy of the Interstate Commerce Commission accounting regulations that were in force from 1925 to 1933, inclusive?

Mr. Dearmont: Will you give me just a moment?

Mr. Brandwen: Surely.

Mr. Dearmont: I am advised by the chief accounting officer that he believes he has probably that in his office, that is, for any particular year. 1932, do you want?

Mr. Brandwen: Yes, for 1932, but I think since we are asking for it, to avoid any question about that, I thought if we would take the accounting regulations during that entire period of 1925 to 1933, inclusive, we could simplify matters.

Mr. Dearmont: Yes, they have, and they will inquire and advise you shortly.

Mr. McConaughy: What kind of preparation for trial is this, I ask your Honor? The case was set for hearing back in October. He wants to prove accounting regulations and hasn't got them in court, and this is a document published by the Interstate Commerce Commission.

Mr. Brandwen: Well,—

The Court: I don't think it is necessary to call upon the trustee's counsel for that.

Mr. Brandwen: To show just what these other unadjusted debits were. Well, in view of the fact trustee's counsel stated that those records were probably available, I would like to get them from him, if I could, so as to save time, if I may.

The Court: If he desires to show them to you.

Mr. Dearmont: The assistant accounting officer has gone out to inquire, and will produce them if we have them.

Mr. Brandwen: Thank you.

Q. Now, do you have any split-up of the other unadjusted debits which you have stated here, which has been stated here as $16,101,497, into component parts as reported to the Interstate Commerce Commission?

A. Yes, I have.

Q. Would you please state what they are?

A. According to the annual report filed with the Interstate Commerce Commission for the year ended December 31, 1932, the unadjusted debits are indicated to be family line bills, $15,867,538.50, and other items $233,958.44.

Q. That is to say, the designation family line bills as it appears in that report filed with the Interstate Commerce Commission is one of the sub-heads of "other unadjusted debits", all of which total $16,119,697.00; is that it?

A. That is correct.

Q. And what are the other items contained in the category of "other unadjusted debits"?

A. Will you please restate the question?

Q. Are there any other items stated in the category "other unadjusted debits" besides those of "other unadjusted debits" family line bills?

A. Yes, there are other items.

Q. And they amounted to? A. $233,958.44.

Q. I ask you to examine a copy of the report filed by New Orleans, Texas & Mexico Railway with the Interstate Commerce Commission as of December 31, 1932, and ask you whether there is any statement or comment made with respect to this item: "Other unadjusted debits family line bills" in that report?

A. The annual report of New Orleans, Texas & Mexico Railroad Company, to the Interstate Commerce Commission for the year 1932, indicates on page 219, schedule 228, other unadjusted debits family-line-accounts. "Open accounts of affiliated companies to be applied in offset settlement at time of general liquidation of all amounts due to or from affiliated companies, $15,867,538.70."

Q. That is the only comment made with respect to the item "Other unadjusted debits—family line bills" as it appears in that report? A. That is correct.

Q. From an examination of this report filed with the Interstate Commerce Commission by New Orleans, Texas & Mexico, this item of other unadjusted debits family line bills appears in balance sheet of New Orleans, Texas & Mexico? A. Yes, sir.

Q. And it appears on the asset side of the balance side?

A. It does.

Q. And does it appear in the category of current assets?

A. No, sir.

Q. Does it appear in the category of deferred assets?

A. No, sir.

Q. Where does it appear?

A. It appears as the last item on the balance sheet under other unadjusted debits.

Q. On the asset side? A. On the asset side, account 727.

Q. Do you know from an examination of the original book records of New Orleans, Texas & Mexico, what was comprised within this item "other unadjusted debits—family line bills"?

[Q.] During the course of my examination at Houston, Texas, I was informed of the general nature of the make-up of those accounts.

Q. Who informed you thereof?

A. Mr. Banks, assistant auditor New Orleans, Texas & Mexico.

Q. And would you state what you were informed by him?

A. I requested Mr. Banks to furnish me with the details of the $15,867,538.70, of family line bills of December 31, 1932. In the limited time at my disposal I had only people to show me details that were attached to a journal entry that was made as of December 31, 1933, which was supported by a detailed statement of the family line bills.

Q. What was the amount of other unadjusted debits-family line bills as of December 31, 1933?

A. Prior to the entry of journal No. 56, the amount was $15,659,743.69.

Q. That is a difference of how much between this latter figure than you quoted and the figure as of December 31, 1932? A. Approximately $200,000.

Q. Did you have occasion to talk with Mr. Banks about the relative and comparative character of the family line bills as of December 31, 1933, and those of December 31, 1932?

A. Mr. Banks furnished me with the supporting vouchers of the St. Louis, Brownsville & Mexico Railroad, vouchers that were unpaid in favor of New Orleans, Texas & Mexico, having liabilities prior to March, 1933. From those vouchers and also within the limited time at my disposal, I ascertained that the general nature of the charges might be classified as follows:

Q. Charges you mean in the family line bills?

A. That is correct. There are charges for a proportion of joint expenses pooled during the month for fuel, oil used

during the month, per diem reclaimed and mileage paid, maintenance and supplies, dividends and other charges too numerous to mention, but this will indicate the general make-up of the bills that I saw.

Q. These bills that you are now testifying to are the other unadjusted debits family line bills?

A. That is correct.

Q. Did he indicate to you whether there was any substantial change in the category of the family line bills between December 31, 1932, and December 31, 1933?

A. No, sir.

Q. He indicated there was no substantial change?

A. No substantial change.

Q. Now, I believe you testified yesterday that among the family line bills that were unpaid as of December, 1933, immediately prior to December 31, 1933, were two dividends declared on June 17, 1931, amounting to—was it $650,000.

Mr. McConaughy: 55.

The Witness: $655,000.

Q. (By Mr. Brandwen) $655,000. Is that correct?

A. That is correct.

Q. You found bills among the family line bills for those two dividends among those unpaid bills immediately prior to December 31, 1933? A. That is correct.

Q. Now, you referred to a journal entry No. 56 on December 31, 1933. Do you have an exact copy thereof?

A. No, I just made a transcript of the information contained on the voucher.

Q. And would you please state what the transcript discloses?

A. The transcript discloses that the charges were made to advances to St. Louis, Brownsville & Mexico Railroad Company, of $10,664,331.10; Beaumont, Sour Lake & Western Railroad, $3,588,548.60; Orange Northwestern Railroad Company, $201,111.78, and New Iberian Northern Railroad, $1,205,752.21. A credit was made to family line bills of $15,659,743.69, and the explanation on the journal substantially states as follows: To transfer family line

bills of record as of November 30, 1933, having liability prior to 4/1/33, from account 727, unadjusted debits to account 706, advances to affiliated companies as authorized by auditor's file 21-0, and as detailed on the statement attached to file copy of this entry.

Q. May I ask whether—to break down in simpler terms just what happened and see if this is correct: That journal entry No. 56 states that there were family line bills in favor of New Orleans, Texas & Mexico, and owed by St. Louis, Brownsville & Mexico, Beaumont Sour Lake & Western, Iberian— A. New Iberian.

Q. New Iberian & Northern, and what is the other?

A. Orange Northwestern.

Q. And Orange Northwestern in the amount of fifteen million— A. —$659,743.69.

Q. $15,659,743.69, which were still unpaid?

A. That is correct.

Q. And the amount of the family line bills still unpaid as of April 1, 1933, of St. Louis, Brownsville & Mexico Railway were $10,664,331.10? A. That is correct.

Q. Family line bills prior to April 1, 1933? A. Yes.

Q. And that the total amount of other unadjusted debits-family line bills prior to April 1, 1933, still unpaid of the Beaumont, Sour Lake & Western were $3,588,548.60?

A. That is correct.

Q. And that there were family line bills owing, due from Orange & Northwestern Railroad for a period prior to April 1, 1933, in favor of New Orleans, Texas & Mexico, which were still unpaid in the amount of $201,111.78?

A. That is correct.

Q. And that there were family line bills due from New Iberian Northern Railroad Company, bills coming into being prior to April 1, 1933, in favor of New Orleans, Texas & Mexico, in the amount of $1,205,752.21, which were still unpaid? A. That is correct.

Q. And am I correct in understanding that the journal entry arranged a transfer of all these unpaid family line bills due from these four respective subsidiaries which were still unpaid as of April 1, 1933, to another account on the balance sheet of New Orleans, Texas & Mexico?

A. That is correct.

Q. And the account to which these unpaid family line bills of these four respective subsidiaries were transferred, was that under the investment account?

A. That is where this classification is.

Q. It was transferred to a position in the investment account. And what are the categories in the investment account? You have a copy of the report filed with the Interstate Commerce Commission.

A. Investments in affiliated companies, it is sub-divided into A, stock, B, bonds, C, notes and D advances.

Q. And then this journal entry which was accomplished shortly after the proceedings here began in this court effected a transfer of these unpaid family line bills to this account of advances in the investment account of N O T M and affiliated companies? A. That is correct.

Q. And there had been some figures in the advances account of the investment account prior to this transfer?

A. That is correct.

Q. And this was in addition to that account?

A. That is correct.

Q. Now, in that examination that you made of these family line bills when you were in Houston, did you get any details dealing with the age of these unpaid family line bills? A. I did.

Q. Will you please particularize them, insofar as you can, without too great detail?

A. I made aging based upon the audit—

Mr. McConaughy: Your Honor, I want to protest once again. He could have these on a piece of paper, listing them and the dates of each when the interest and dividends accrued. Now, we have to listen to this for 15 minutes.

Mr. Brandwen: Now, your Honor please, perhaps we can do that. Do you have anything that we can conveniently do that? A. Yes, sir, this schedule.

Q. All right.

The Court: We recessed an hour too early this morning. If you think it would shorten this matter a good deal to total up a good many of these matters, I wish you would.

Mr. Brandwen: We only took ten minutes to get a bite. We will do everything we can. It is, as your Honor appreciates, a tremendous matter. I have not gone to bed before one o'clock any night since I have been here.

The Court: I understand. This matter has been going on here for years and years, and this comes in at the last moment. It seems to me you could organize this so as to take a great deal less time.

Mr. Brandwen: We are doing everything we humanly can to do that, if your Honor please. Of course, if your Honor please, in respect to a matter that involves a relationship, as you know, of parent and subsidiary, you are dealing with a great many aspects that are not typical of ordinary dealings between people who are dealing with each other at arms length, and one cannot read records, for example, such as in the Commonwealth case, or the Deep Rock case, without being impressed with the detail that those various tribunals have required parties to go into, in order to be able to show the full effects of what was done, and after all here you have a relationship of parent, Missouri Pacific and New Orleans, Texas & Mexico, and have got twenty-two companies, you are dealing with twenty-five railroad companies, you are not dealing with a very simple situation, the ramifications are tremendous, I can appreciate, your Honor, and nothing would please me more, and I am not saying this merely as a matter of words, I mean this very sincerely, we are trying and I think that your Honor will agree that when this matter is concluded that we have really exercised the utmost in resourcefulness for the purpose of simplifying the issues instead of going into all kinds of detail, and I can't do it at the moment to show just the extent to which we have gone for the purpose of making the issues so simple and how we have brushed aside so many things that might have been properly considered. We simply have said to ourselves, we will have to deal with the most important, with the basic issues and let the other things go by the board so that it will not be too complicated. If your Honor please, I really would like you to believe me that we have really gone to tremendous lengths. As I say, I

have read through records in matters of this kind, and there is just no comparison in the streamlining that we are doing here, and that we propose to do.

Mr. Kitchel: We admit it is a complicated situation. Mr. Biggs started this proposition back in October, 1943, before the Interstate Commerce Commission. Counsel has made one or two endeavors to have this thing brought on by special intervention, but apparently the unraveling of this complex situation, as far as I can make out from counsel's statement, has been rather left to the last moment, and he comes in here more or less unprepared.

Now, I think he has had plenty of time since October, 1943, to date to prepare himself thoroughly, even in this complex situation he has mentioned.

Mr. Brandwen: If your Honor please, I do think that Mr. Kitchel's statement that we come in here unprepared is really as contrary to the facts as we know any statement can be. We have worked on this matter most assiduously, not at the last minute at all, and if we hadn't worked most assiduously in this matter, there couldn't be any kind of presentation such as has been made to this date. We have worked certainly as energetically and as vigorously as any counsel that I know of who have worked in the preparation of any litigation, and to say that we come in at the last moment unprepared, I think really it is not fair, it is entirely baseless, and entirely unwarranted, in fact, and it is entirely without justice.

Mr. Kitchel: I understand, I am just informed that Mr. Delaney, the accountant, began his work in the Missouri Pacific offices on December 10, about three weeks ago.

The Court: This is January 10th.

Mr. Kitchel: Beg pardon?

The Court: This is January 10th.

Mr. Kitchel: Yes, a month.

Mr. Brandwen: If your Honor please, I don't know how many people of the Missouri Pacific have been working on this matter, but I am sure a great number of people have been working on this matter. I am quite sure that

they have had to spend a great deal of time in getting together a good deal of material.

The Court: There were statements made here about the number of Missouri Pacific employees that have been engaged in it.

Mr. Brandwen: Yes, and when we consider that these men have been working day and night, holidays and Sundays, without any kind of relaxation, working day and night, and not merely since December 10th, Mr. Railey is quite mistaken. Sure, Mr. Delany may have come here to St. Louis on December 10th, but I am quite sure that Mr. Railey is in no position to say how much work Mr. Delaney did before December 10th, and how much work was done in other offices before December 10th. If your Honor feels—one of the things we wanted to do was, we wanted to have this matter heard last summer, we tried to have this thing brought on, we wanted to avoid this very situation right now, and that, if your Honor please, with respect to this matter, we asked for a separate hearing, and your Honor felt that we shouldn't have a separate hearing, certainly on a hearing of a claim of this size, and really fairness and candor must compel the conclusion that we are moving along with considerable dispatch, for a matter as complicated and as difficult as this, dealing with a reorganization, and inter-company dealings involving 25 companies.

Mr. Kitchel: May I suggest a remark that if they have been working for such a long time and so steadily on this thing, why couldn't they have had a few of these schedules arranged so that this proof could be put in in a short time instead of dragging it out as was attempted to be done this morning?

Mr. Brandwen: If your Honor please, if we hadn't spent a great deal of time preparing the schedules that we have already prepared, I don't think Mr. Kitchel would have any notion of how long it would take. When Mr. Kitchel, or Mr. McConaughy made a suggestion this morning that would expedite the matter, there was no delay with respect to trying to accommodate the situation, and that was

done and we got a schedule out within a few hours, but that schedule could not have been gotten out in these two or three hours unless a tremendous amount of preliminary work had been done. Each one has his own theory how a case should be presented, or what facts are, or may be material, and your conception of what may be material, may be different from mine, but when, for example, in court you make a suggestion as to the way you think it should be done, if we would meet your suggestions without doing violence to the merits of the case, of course, we will accommodate ourselves to your wishes on that point, but I think, if your Honor please, and I want the record to be as clear as I know how, it is grossly unfair of Mr. Kitchel to make any such comment with respect either to the nature of the preparation or the nature of the presentation. After all, when these gentlemen have taken all these years to get to a point where they are now submitting a plan of reorganization, and then for them to come along and say that with respect to a claim that has been in existence all these years, we have been at it for two days only and they are already complaining about it, where they have been at the preparation of plans for 12 years.

Mr. Kitchel: Which reminds me, your Honor, that they should have been in this case, if they were going to raise this claim, they should have done it in 1937, when the thing was first before the commission, instead of waiting until the eleventh hour.

Mr. Brandwen: If your Honor please, I suppose we can go on this way quite a good deal. I paid my respects the other day in the Circuit Court of Appeals with respect to why this wasn't brought on since 1937, and I am perfectly willing to meet that issue as to why it wasn't brought on since 1937, and do that with the clearest kind of conscience, and if there is anybody that wants to know how I would deal with that, I am perfectly ready to discuss that point. There can't be any question in anybody's mind. I mean, if your Honor please, one of the great difficulties in this matter, one of the most serious difficulties in this matter is, here is a claim that has been filed, a claim in existence all these years and even to this very day

there has been not a scintilla of evidence beyond a document offered with respect—in this hearing, in these proceedings before this court with respect to the validity of the claim, and we have to produce evidence on the question of advances ourselves. I say, if your Honor please, I argued this thing yesterday and your Honor made a ruling on this point, I hope your Honor will excuse me for referring to this, but I think this really, so far as Mr. Kitchel is concerned, I think it really comes with poor grace and I think it is most unfitting for him to speak about the fact that we have to hear the claim at this moment when they had all these years and this claim could have been disposed of. There were representatives of the trustee here, there were representatives of the [cliamant] here who could have done it, and here we have to go along without even the benefit of a trustee of this estate of New Orleans, Texas & Mexico, to handle the objection.

The Court: A good deal of this is beside the point. How can we shorten this proceeding?

Mr. Brandwen: If your Honor please, all I can say is we are going to get as many schedules on this as we can, and when before this testimony began, Mr. McConaughy made the suggestion, or put the question as to whether there was any schedule that Mr. Delaney had on the ageing of the accounts, I asked Mr. Delaney whether he had one and he said he had one, and I was worried then to see if that was in shape to be offered as an exhibit. I am perfectly ready to do that with respect to all those schedules, and we want to make one thing clear, if your Honor please, and that is this, in order to get the full flavor of the relationship between Missouri Pacific and New Orleans, Texas & Mexico and subsidiaries, it is not enough merely to have certain facts that are capable of various interpretations, or from which certain inferences can be drawn, we want to have those made crystal clear, so that there can't be any question of doubt about that, and certainly we have a right to do that with respect to a claim of this magnitude, a claim that deals with a quarter of the liabilities of this estate. I want to say this, if your Honor please, that we do not

know to this very moment in this hearing, what the trustee's position of the New Orleans, Texas & Mexico is with respect to this claim. Even to this point, even though we have been at it for two days. Still I say, can't he, and certainly I think, if your Honor pleases, and I say this most respectfully, certainly we should have a right to know what his position is with respect to it. We have gone on just the same because we did not want to delay; I told the Circuit Court of Appeals on Saturday, that if it wanted us to go on on Monday we would go on, so there wouldn't be any complaint about delay. We want to go on and have this thing concluded, and have this thing concluded as speedily as possible, have it concluded once and for all. That was the very burden of my argument, and the [desireability] of having a separate hearing so that this matter can be disposed of once and for all, plan or no plan, or whatever may happen to any plan or whatever plan may be adopted.

Mr. Kirschbaum: As to how this matter may be shortened, I venture to make a suggestion to the court.

The Court: I will be glad to hear you.

Mr. Kirschbaum: It has been suggested that a number of these exhibits that Mr. Brandwen has been offering right along are in the record. That being so, it seems to me, there should be no need for rehashing those, and insofar as any impression is concerned, I don't think that he comes now before a jury where a jury needs be impressed. I think also that with regard to any inferences that may be drawn from such documents that are in the record, it seems to me that that is a matter of legal argument which counsel can use in raising the objection if there be objection to the plan as such. I think everything else is persiflage.

Mr. Brandwen: If your Honor please, I want to make perfectly clear that there isn't any document that we are offering that was in the record. If there is any document that we are producing that has been before the Commission we will have that without limiting it at all, but there has been no document that we have offered as an exhibit

that has been before the Interstate Commerce Commission. I want to make that [pefectly] clear. If there is any document that we offered that has been submitted to the Interstate Commerce Commission, if these gentlemen will tell us what the document is, certainly we will not have any extended testimony with respect to that, and when I speak here about inferences, I am not talking about legal argument, I am talking about completing testimony, factual testimony.

The Court: The more discussion we have, the more difficult it is for the court to determine how it is possible to shorten this.

Mr. Kirschbaum: Can't that be done off the record, can't the counsel get together with the trustee off the record and come here and offer them the next day?

Mr. Brandwen: If Mr. Kirschbaum knew anything at all about the case—not knowing anything about the case, I can understand it, but after all I think that when, for example, a suggestion springs from ignorance, I think a suggestion is not very commendable.

The Court: Mr. Kirschbaum, the court didn't hear your last statement. I would like to hear you repeat it. You were drowned out by opposing counsel.

Mr. Kirschbaum: I simply said, your Honor, that I thought that all these documents could be agreed upon as to their validity outside of the court room with the trustee or Mr. McConaughy, and then come prepared next day and offer these documents in evidence, and there wouldn't be any wrangling among counsel as to their validity and veracity and so on, and from there on counsel can present his legal argument.

The Court: Is that your opinion also, Mr. McConaughy?

Mr. McConaughy: Yes, your Honor, I think that is a happy suggestion. I think the question that Mr. Brandwen was just about to ask will illustrate the point. Mr. Brandwen has been doing a lot of talking here, but the thing I originally addressed my remarks to was his requesting this witness to list a whole number of items with

figures on them. Now, then, Senator Dearmont has already stated to Mr. Brandwen that if he will give him material of that kind he will prepare exhibits for it. All he has to do is to ask this witness to take his material over to Senator Dearmont and he will prepare it in schedule form.

The Court: It is your opinion that the Court can expedite this best by adjourning at this time?

Mr. McConaughy: I think it all depends on what Mr. Brandwen is willing to do. If he is willing to accept that very generous offer, I think he will have a set of exhibits here that he can go forward on tomorrow.

The Court: Don't you think you can arrange for that, Mr. Brandwen?

Mr. Brandwen: Your Honor, we will have as many exhibits arranged for in advance as we humanly can, but our testimony is not going to be limited to testimony from—we are going to have testimony of other people in addition that will not be dependent upon exhibits alone.

The Court: Can counsel shorten the proceeding by agreeing to the validity of certain documents?

Mr. Brandwen: I don't think there has been any question of validity of the documents. I haven't heard any question about the validity of the documents. I think the documents have been accepted.

Mr. McConaughy: The only point is that none of us have ever seen any of these exhibits until they flash them on us here.

Mr. Kirschbaum: Then, they were all rehashed before, your Honor.

Mr. McConaughy: Just to bring this to a point, I think it would be well to have the last question read.

The Court: Read the last question, Mr. Reporter.

(Last question read.)

Mr. McConaughy: Let me describe these items. In each year there is an amount of interest charged against the

particular subsidiary. Now, what Mr. Brandwen is asking this witness to do is to go back to 1924, 1925, or some year in there and to read off the amounts of interest that accrued with respect to each of these periods and to each of these three or four subsidiaries into the record when a piece of paper would show it much more clearly?

Mr. Brandwen: If your Honor please, I think this is a perfect example of how statements are made without any knowledge of what is involved. I wasn't going to ask anything at all with respect to it, there was nothing further from my mind than that. Now, what you are confronted with, we have a very strange situation, on one hand they say the exhibits are flashed on them, they have never seen them before. On the other hand, they say they are already in the record. Both of those statements can't be true. I was going to ask the witness about the ageing. He might have been able to answer that question probably in two minutes.

Mr. McConaughy: You know that is not so. Interest accrued in each of several years.

Mr. Brandwen: I was not going to. That may be your meaning of it, that may not be mine. You don't know just what I had in mind, you don't know what the witness was going to say, and I think what we have here is, you have certain estimates made as to how long certain things are going to take when they know nothing at all about them. That answer might have been given in two minutes, but even though it might have been given in two minutes I was perfectly willing to have a schedule offered so as to avoid any comment with respect to it, but when Mr. McConaughy speaks about interest in those items in connection with ageing, I want to say clearly he knows nothing at all about it, and I think he ought to be informed as to what the situation is. He knows nothing at all about it, because that was not going to be involved in the question at all. It wasn't involved in that question, and I think the least they can do when they make these claims is to ascertain the facts and speak with more knowledge. That is the difficulty we are laboring under, your Honor please. We wanted this done and a good deal of time was spent on

this in order to be able to get an answer to that question, that would be reduced to a very brief compass. Certainly we could have gone into the matter the way Mr. McConaughy suggests, but that is one of the things we did in order to avoid all those details, in order to avoid all that elaboration, but to get really the simplest kind of presentation we have struggled with those figures and spent a good deal of time to get them compressed.

The Court: Proceed.

Mr. Brandwen: Q. Do you have a schedule that we can use?

A. Here is my working paper, but you can't use that.

Q. You say we can not use it?

A. I don't think so; it is not sufficiently explained.

Mr. Brandwen: What would Your Honor suggest that we do, to take time off to get this reduced to a schedule to introduce, or use it?

The Court: How much time will it take to do that?

The Witness: About fifteen minutes, because there is other information on the schedule.

The Court: Do you suggest that we take a recess?

Mr. Brandwen: Very well.

The Court: Announce a fifteen-minute recess.

(After the recess, the hearing was resumed at 4:25 o'clock P. M.)

Mr. Brandwen: Q. Mr. Delaney, did you prepare a schedule, during the recess, listing and detailing the aging of the family line bills that were still unpaid as of and immediately prior to Journal Entry No. 56? A. I have.

Q. Is this the schedule that you have prepared? A. It is.

Mr. Brandwen: I offer this in evidence. (Handing document to Mr. McConaughy, and then to the Court.)

Mr. McConaughy: All right.

(The document last offered in evidence was thereupon marked Comstock Exhibit 37.) [See Vol. of Exs. p. 93.]

Mr. Brandwen: Q. And it was that group of family line bills, contained in schedule, Exhibit 37, that were transferred to the investment account as advances to affiliated companies, by reason of Journal Entry 56, concerning which you testified this afternoon?

A. That is what the Journal Entry indicates.

Q. Did you prepare a schedule showing the increase of other unadjusted debits as contained in annual reports to the Interstate Commerce Commission? A. I did.

Q. Submitted by the New Orleans, Texas & Mexico in each year from December 31, 1924, to December 31, 1932?

A. Yes.

Q. I simply want to ask you one question: In your third column you state "total unadjusted debits". Should that be "total unadjusted" or "total other unadjusted"?

A. It should be "other".

Mr. Brandwen: Will you write the word "other" on it here, and also here on the top (handing document to Mr. Kitchel)?

Q. Do you have with you in such form as can be presented, in schedule form, the balance sheets of the Beaumont, Sour Lake and Western, as submitted to the Interstate Commerce Commission, for the period January 1, 1924, to December 31, 1932? A. I have.

Q. Are these figures contained in the two sheets you have just handed me, figures taken from the reports filed by the Beaumont, Sour Lake and Western with the Interstate Commerce Commission? A. They are.

Q. Are there any computations of any kind made by you, that did not appear in the original reports filed with the Interstate Commerce Commission? A. No, sir.

Mr. Brandwen: I offer these in evidence.

Mr. McConaughy: That is all right, subject to check.

(The two sheets last offered in evidence were marked Comstock Exhibits 39 and 39-A, respectively.) [See Vol. of Exs. p. 95.]

Mr. Brandwen: Q. I don't know whether we already have this in the record, but it simply involves one figure.

I might ask you this, Mr. Delaney: Do you have a figure readily available which will state the total amount of interest on funded debt of the New Orleans, Texas & Mexico, as reported in the annual reports to the Interstate Commerce Commission by the New Orleans, Texas & Mexico? A. I don't understand the question.

Q. Can you state what was accrued as a charge for interest on funded debt, for the period January 1, 1925, to December 31, 1932, of the New Orleans, Texas & Mexico?

A. I can.

Q. What is it? A. $17,169,269.

Q. Can you state, and if so, state what it is; what was charged to the New Orleans, Texas & Mexico surplus for dividends during the same period, January 1, 1925, to December 31, 1932? A. $7,267,386.

Q. Do you have in a single figure the total of the net railway operating income of the New Orleans, Texas & Mexico as reported to the Interstate Commerce Commission, from January 1, 1925, to December 31, 1932? A. I do.

Mr. McConaughy: What company?

Mr. Brandwen: New Orleans, Texas & Mexico.

A. $6,583,861.

Q. Was there any other income reported during that period from January 1, 1925, to December 31, 1932, for New Orleans, Texas & Mexico? A. There was $303,900.

Q. Any additional credits direct to the profit and loss account during that period?

A. The reports indicate $62,792. was.

Q. Making total credits of $6,950,554.?

A. That is correct.

Q. There were certain deductions— A. There were.

Q. (Continuing) —from that during the period January 1, 1925, to 1932? Please state what they were.

A. There was miscellaneous deductions of $195,784. There was interest on unfunded debt, $153,904.

Q. What are the charges direct to the profit and loss account? A. $1,864,108.

Q. You have already given the total figure, I believe, for dividend income from affiliated companies, as reported,

and also interest income from affiliated companies' debts, as reported? A. I have.

Mr. Brandwen: I think that is all with Mr. Delaney.

Mr. McConaughy: Your Honor, we would like to defer the cross examination until tomorrow morning, if we may.

The Court: You may announce an adjournment until tomorrow morning at ten o'clock.

At this point, at 4:35 o'clock P. M., an adjournment was taken to [Jnauary] 11, 1945, at ten o'clock A. M.

Met, pursuant to adjournment as above, on January 11, 1945, at 10:00 o'clock a. m.

The Court: You may proceed, gentlemen.

Mr. Brandwen: If your Honor please, there are just two matters I would like to offer. First, I would like to offer in evidence document furnished by counsel for the trustee, which indicates the capital stock and bonds of subsidiaries of New Orleans, Texas & Mexico Railroad, owned 100 percent, and pledged under first mortgage, dated April 1, 1924.

(The Exhibit last offered in evidence was marked Comstock Exhibit No. 40.) [See Vol. of Exs. p. 98.]

Mr. Brandwen: I now offer in evidence document summarizing statement of sources of income, or deficit, for years 1925 to 1932, inclusive, of the New Orleans, Texas & Mexico Railroad, which Mr. Delaney testified about at length the other day. It is presented in summary form.

(The Exhibit last offered in evidence was marked Comstock Exhibit No. 41.) [See Vol. of Exs. p. 99.]

Mr. Dearmont: If your Honor please, on yesterday Mr. Brandwen asked if I would not undertake to furnish certain excerpts from classifications, as income, profit and loss and general balance sheet accounts for railroads prescribed by the Interstate Commerce Commission. I have secured from the chief accounting officer of the trustee the excerpts requested:

Account 513, entitled, "Dividend Income;"
Account 727, entitled, "Other Adjusted Debits."

I have also been requested to read the last sentence of account 514, entitled, "Income from Funded Securities," which reads, as follows:

"Interest accrued shall not be credited prior to actual collection unless its payment is reasonably assured by past experience, guaranty anticipated provision, or otherwise."

I am advised by the chief accounting officer of the trustee that the rules which appear on this paper and from which I have just read, were in force during the years 1925 to 1933, inclusive.

Mr. Brandwen: I should like to offer this document in evidence, if your Honor please.

(The Exhibit last offered in evidence was marked Comstock Exhibit No. 42.) [See Vol. of Exs. p. 100.]

Mr. Dearmont: That is all, Mr. McConaughy.

JAMES M. DELANEY,

having been previously sworn, resumed the stand and testified further, as follows:

Cross Examination by Mr. McConaughy

Q. Mr. Delaney, do you have your notes from which you gave the testimony yesterday concerning the repayment of certain of these advances? A. That is Exhibit 27.

Q. No, this was given as oral testimony. A. Yes.

Q. Found at page 134 of the transcript of the testimony. Do you recall there was an item of $500,000. repaid on June 30, 1930; your next was $8,800., on March 30, 1931. Now, I believe you stated that this material is based on the New Orleans, Texas & Mexico local treasurer's records, is that correct? A. That is correct, sir.

Q. Is that the place where you would expect to find the accounting behind these disbursements of $500,000. and $8,800., as testified, and so forth? A. That is correct.

Q. You would not think it necessary to look at the ledger to determine the nature of the disbursement?

A. It might be.

Q. Did you look at the ledger? A. I did.

Q. What does the ledger show with respect to this disbursement of $200,000.; I take it you also looked at the Missouri Pacific books on this same thing? A. Yes, sir.

Q. What do they show with respect to the $200,000., disbursed on August 31, 1931?

A. The general ledger indicates that $192,387.93, was applied to interest and $7,612.07, was applied to principal.

Q. Let's take the next item of $75,000.00, October 31, 1931?

A. The general ledger indicates that $51,405.74, was applied to interest and $23,594.26, to principal.

Q. What was the date? A. On October 31st.

Q. Now, the next item, December 31, 1931, $100,000.00?

A. The general ledger indicates $59,997.75, was applied to interest, and $40,002.25, to principal.

Q. What was the date on that?

A. That is December 31, 1931.

Q. The next item of $300,000.00?

A. On February 29, '32; is that the one you have reference to?

Q. That is right.

A. The general ledger indicates $64,125.07, was applied to interest and $235,874.93, principal.

Q. You didn't find another item about February 27, 1932, did you? A. I don't recall it.

Q. Now, the next item is August 31, 1932, $225,000.00?

A. The general ledger indicates $168,175.00 was applied to interest and $56,828.15, to principal.

Q. Now, then, if you take those payments as to principal, and apply them to the—the total of advances, which you testified, was $7,858,000., is that correct?

A. $7,858,950.

Q. Now, if you deducted from that only the principal payments, what balance would remain?

A. Do you want me to make a mathematical computation?

Q. Yes, if you will please. Mr. Delaney, what was the total amount of advances before you deducted any repayments, do you recall? That is, to which you testified?

A. What period does that request refer to, please?

Q. I am referring to the advances to which you testified.

A. In connection with Exhibit 27?

Q. In connection with Exhibit 27, most of them were shown on that. A. May I see the exhibit, please?

Q. Here is a copy of it. I wonder if I may refresh your recollection, just to save a little time— A. Yes, sir.

Q. At page 132 of the record, you said that according to that exhibit the amount was $9,531,750.; then you testified as to another $100,000.; do you recall?

A. According to Exhibit 27, if my memory serves me correctly, the total advances shown thereon were $9,531,750.

Q. That is correct.

A. Then there are some repayments on that exhibit.

Q. Well, I am trying to get the full amount of advances.

A. That is right.

Q. There should be added to that $9,531,000.—

A. Another $100,000.

Q. I note that mentioned in your testimony on page 134.

A. That is correct.

Q. So that the aggregate of the advances would be what, according to your testimony?

A. The gross advances would be $9,631,750.

Q. And from that sum you would deduct these items to which I first called your attention, is that correct?

A. That is correct.

Q. Now, then, applying that last figure that you gave me, I would like to have you give me the net figure after the principal deductions to which you have just testified in your cross examination.

A. The witness is not clear as to what counsel—as to whether counsel wants a record of the $364,000.00 of repayments that I have on Exhibit 27.

Q. Were the repayments shown on Exhibit 27, included in the repayments to which you have testified orally?

A. No, sir.

Q. So that you then had another repayment of $300,000.00, is that right? A. $364,000.00.

Q. Include that as a further deduction.

A. As a further deduction?

Q. Yes.

A. Mathematical computation would indicate $8,396,038.34.

Q. Then this figure which appears in the transcript of the testimony on page 135, of $7,858,950.00, probably should be corrected, shouldn't it, as the net figure?

Mr. Brandwen: I object to that question, if your Honor please.

The Court: Overruled.

Mr. Brandwen: Exception.

Mr. McConaughy: I will tell you just to make it clear, I will read the question: "Now, if you will just engage in a simple bit of arithmetical computation by adding to summary of the exhibit the additional amounts to which you have just testified," and that refers to these items of $500,000.00, $8,800.00, $200,000.00, $75,000.00, $100,000.00, $300,000.00, $225,000.00; aggregating $1,408,800.00;—I will read the question again now: "Now, if you will just engage in a simple bit of arithmetical computation by adding to the summary of the exhibit the additional amounts to which you have just testified, and deduct therefrom the additional repayments that you have just testified to, what figure do you arrive at as the total net advances from the Missouri Pacific to New Orleans, Texas & Mexico, during that period?" And your answer was, "$7,858,950.00". I think the point is that in deducting the principal payments only you got a larger sum, isn't that it? A. That is correct.

Q. And this figure $7,858,950, is after deducting the total of the sums to which you testified, $1,408,800.00, which included some interest, isn't that correct?

A. That figure is after deducting $1,408,800.00, in payments by the local treasurer of N. O. T. M.

Q. And the $1,408,800.00, includes some interest payments? A. I don't know.

Q. Mr. Delaney, I think there is a little difficulty about that: You testified just a few minutes ago that in the case of a part of the items there was some principal and some interest: Take, for example, the $200,000.00, on August 31, 1931, that you said contained $7,612,000.00 principal, and $192,387.00 odd, of interest, isn't that right?

A. Counsel must have misunderstood my reply. I said the general ledger indicates the way it was applied on the books.

Q. And what is your reason for deducting the $300,000.00, and crediting it all as a payment against the principal when the ledger shows that $192,387.00 odd, was credited as interest only?

A. I have treated it as a straight repayment in the computation.

Q. You have just disregarded the ledger?

A. In that connection, yes.

Q. Mr. Delaney, can you tell me what the total amount of dividends paid by the Brownsville to the New Orleans, Texas & Mexico, in 1931, amounts to?

A. Based on information contained in the annual reports filed with the Interstate Commerce Commission, it is indicated that the St. Louis, Brownsville & Mexico Railroad Company paid to the New Orleans, Texas & Mexico, $4,155,079.00.

Q. Now, at pages 80 to 86, of the transcript you gave a number of cumulative profit and loss figures for the N. O. T. M. covering the period 1925 to 1932. I wonder if you would be kind enough to prepare a statement for me listing the annual amounts that result in these cumulative totals. You do not need do it now, but at your convenience?

A. Counsel, I think Mr. Brandwen introduced that this morning as Exhibit 39, if I recall correctly.

Q. There is the transcript which shows the items I refer to. (Indicating transcript of record)

A. I understand, counsel, this is with reference to the account?

Q. That is right; if you will break those down by years and let me have a copy of it. You don't have to do it now. Referring back to my question about the dividends paid by the Brownsville to the New Orleans, Texas & Mexico, in 1931, was the figure $4,155,079., which you gave, an accrual of dividends or an amount paid?

A. I don't know.

Q. You haven't anything that would show that?

A. No, sir.

Q. I am going to read a question and answer at page 85 of the transcript: "Now, you refer to the line regarding railroad equipment, $33,889.12 that probably speaks for itself; we don't need any explanation on that". This is the part I am interested in: "Now, you come to the next item, delayed income debit depreciation charged to profit and loss; will you please particularize as to that item?" Do you recall what you were testifying to there; do you recall that testimony? A. I do.

Q. Your answer was, "That was a charge made direct to profit and loss after depreciation rates were revised at the request of the Interstate Commerce Commission." Do you recall about what time that request was made?

A. The annual report filed with the Interstate Commerce Commission for the year 1931, I believe contains a reference to a letter, if my memory serves me correct, sometime in April in that year, or maybe now there is a copy of that report that might refresh that.

Q. I wonder if we could get that report?

A. 1931 report. I am now quoting from a copy of the Interstate Commerce Commission annual report of the New Orleans, Texas & Mexico, to the Interstate Commerce Commission for the year 1931, page 323, schedule 396, line 17, delayed income debits, adjustment of depreciation reserve to salvage value of obsolete equipment and revised rates on standard equipment; authority letter from Mr. Alexander Wylie, Director, Bureau of Accounting, I. C. C., to Mr. F. P. Johnson, vice-president, Missouri Pacific Lines, dated April 30, 1931, and as detailed in note under schedule 258-A, page 238, $874,965.82.

Q. Did you look up that letter and the correspondence?

A. No, sir.

Q. Did you ascertain what the reasons were that—or why it was that the Interstate Commerce Commission requested that that change be made? A. No, sir.

Q. Do you know what the rules of the Interstate Commerce Commission were as to depreciation rates during 1931—that is the period in question, isn't it? A. No, sir.

Q. Do you know what they are now?

A. I have read the recent publication, but to quote it from memory I would not attempt at this time.

Q. Do the present rules undertake to deal with depreciation rates? A. I couldn't answer that.

Q. Mr. Delaney, did the New Orleans, Texas & Mexico Railway Company declare any dividend in 1932?

A. The annual report for the year 1932 does not indicate any dividend declared or paid.

Q. And you did not find in your investigation that any was declared?

A. So far as my examination was concerned, I did not.

Q. You testified that you had access to the books of the Trustee in Houston, I think, and in St. Louis, is that correct? A. That is correct.

Q. Did you have any difficulty in getting anything that you asked for?

A. Well, that requires a little explanation, if I may make that, Mr. Counsel?

Q. Go ahead.

A. When I first appeared at the Trustee's office, or counsel's office in St. Louis, I was directed to Mr. Thompson. Mr. Thompson, in turn, directed me to Mr. Baldwin, or Mr. Vollmer. He attempted to reach him by phone while I was in his office, did not succeed, and instructed me to go on up and he would talk to him. When I arrived at the Missouri Pacific office, Mr. Vollmer was very gracious and stated that they would make records available, but I was not to ask any questions of any of the employes; that they had a job to do, running a railroad, and were not interested in this squabble, and any direct questioning would have to be done in court. The result of that, as you can well appreciate in an organization as large as the Missouri Pacific, and within the time limits I had to dig things out—take things at their face value without endangering or jeopardizing individuals, or any one of the Missouri Pacific Railroad.

Q. Were you refused any record that you asked for?

A. They were not produced. There were certain records which could not be located, we looked it up with the auditor, because of the periods, the number of years back in the current records. They have subsequently been produced here in the last couple of days, but I haven't had an opportunity to, as you appreciate, to look over them.

Q. Mr. Delaney, by whom were you retained?

A. Andrew W. Comstock.

Q. And he is the only one who is paying your bill, is he? A. Yes, sir.

Mr. McConaughy: That is all.

Mr. Brandwen: That is all.

(Witness excused)

Mr. Brandwen: Is Mr. Eckert in the room?

M. Eckert,

a witness, of lawful age, being duly produced, sworn and examined, testified on behalf of Andrew W. Comstock, as follows:

Direct Examination

By Mr. Brandwen:

Q. Give the reporter your name, please. A. M. Eckert.

Q. Will you please give your resident address?

A. 4615 Lindell Boulevard.

Q. What is your occupation?

A. Chief accounting financial officer, Missouri Pacific.

Q. How long have you occupied this present post?

A. Since December, 1938.

Q. Did you have any connection with the Missouri Pacific, or New Orleans, Texas & Mexico Railroad, or any of the other companies involved in these proceedings prior to 1938? A. Yes, sir.

Q. Would you please state what those connections were, going back, let's say— A. Twenty years?

Q. The early twenties? A. Forty years?

Q. No, twenty years.

A. I was appointed auditor of the Gulf Coast Lines, which is a group of about fifteen companies, along in 1918. I served as auditor and general auditor until February, 1938, when I came to St. Louis as general auditor of the Missouri Pacific.

Q. So that from the period of 1918 to 1938, you were general auditor of the New Orleans, Texas & Mexico; St. Louis, Brownsville & Mexico; Beaumont, [Sour] Lake, among others, from 1918 on? A. Yes, sir.

Q. Where were your headquarters during the period from 1918 to 1938?

A. At Houston, Texas, until I came to St. Louis in February, 1938.

Q. Would you please state for the Court just what the general duties of your task were, your occupation, were, from 1918 to 1938, in your capacity as auditor and general auditor, briefly?

A. General supervision over the accounts, ledgers and preparation of annual reports and such things as ordinarily fall within the province of that office.

Q. Supervision of general entries?

A. I did not make them myself.

Q. But under your supervision?

A. Under my supervision, and with my approval; yes, sir.

Q. Mr. Eckert, I believe you have listened to the testimony given by Mr. Delaney, when he was on the witness stand?

A. Yes, sir; I have heard a good deal of it, but I did not hear all of it.

Q. You were in the court room, were you not, when you heard all the reading of entries from a cash book which was kept by the New York treasurer of the New Orleans, Texas & Mexico? A. Yes, I was in the room.

Q. Now, that book was, or was that kept under your jurisdiction? A. No, sir.

Q. That was under the jurisdiction of the treasurer in New York? A. Yes, sir; or Cleveland.

Q. You say New York or Cleveland; would you please state when the dividing line took place so that it was no longer in New York and became Cleveland?

A. I don't recall the exact date.

Q. Was it changed to Cleveland after you became auditor of the Missouri Pacific? A. I don't recall the date.

Q. But you could verify that? A. I could verify it.

Q. From an examination of the cash book itself?

A. Yes, sir.

Q. Have you ever seen the cash book from which testimony was given yesterday by Mr. Delaney of the New York treasurer's cash book? A. I don't believe I have.

Q. So you haven't seen it even to the present time?

A. Not that I recall—I recall—

Q. Do you know how the office of the New York treasurer of the New Orleans, Texas & Mexico was set up?

A. I do not, sir.

Q. Do you know how it functioned?

A. No, I don't know exactly how it functioned?

Q. Can you tell us approximately, or generally, how it functioned?

A. Well, it was under the supervision of some one else. I don't know just exactly how it functioned. I think Mr. Wyer was in charge for a time. I think he was also in charge of Cleveland.

Q. When you refer to Mr. Wyer, you are referring to William Wyer? A. William Wyer.

Q. And before Mr. Wyer was in charge of the New York treasurer's office in New York of the New Orleans, Texas & Mexico, you don't know who was in charge prior to him?

A. No, I don't recall. I think it was Mr. J. E. Davey, if I recall correctly, in charge, under Mr. William Williams.

Q. When you refer to Mr. Wyer being in charge of the New York treasurer's office, was he treasurer at the time of the New Orleans, Texas & Mexico?

A. The records will show that; I don't know.

Q. From your general knowledge of the books and records of that, you must understand, must have been rather thorough going, because you say you were responsible for the preparation of annual reports to the Interstate Commerce Commission for the New Orleans, Texas & Mexico, during the years, at least 1924 to '32, inclusive; do you know what transactions were conducted by the treasurer's office of the New Orleans, Texas & Mexico, in New York?

A. Well, I know he made—advances were made from time to time—through the treasurer we got the accounting.

Q. Were there certain financial transactions engaged in by the New York treasurer's office, that were then passed

on at some subsequent date to your department in Houston? A. Yes, sir.

Q. Their office of the New Orleans, Texas & Mexico is in Houston—was in Houston? A. Yes, sir.

Q. During this entire period? A. Yes.

Q. Were you consulted, or advised in advance of the transactions made by the New York treasurer in New York?

A. I don't know that I was consulted or not; I know that we had—we got the advances from New York, or from Cleveland, as the case might be.

Q. When you say "advances," you mean the monetary advances, is that what you are referring to? A. Yes, sir.

Q. Let me ask you this; the New York treasurer kept an account with the Irving Trust Company, didn't it?

A. Yes, sir.

Q. And did you get a record of that account each month?

A. Yes, we got account current from the New York office, or Cleveland office, showing the amounts that were included therein.

Q. You got that shortly after the first of the month in each case? A. Yes, sir.

Q. Do you know whether the New York or Cleveland treasurer's office handled any railroad operating finances, or were they all handled there?

A. There was a time that it was decided to pass money from the Railway Express Agency to the New York office and ultimately they were reimbursed to us. We were reimbursed for the amounts that was transmitted there.

Q. When you say in your last answer it was decided—decided by whom, do you know?

A. Decided by the management.

Q. Would you particularize a little more fully?

A. Well, I was then under the supervision of Mr. F. P. Johnson, the late Mr. F. P. Johnson, and the instructions came from him, I believe, as I recall now.

Q. Mr. F. P. Johnson was vice-president and chief financial officer of the Missouri Pacific Railroad? A. Yes, sir.

Q. Was he an officer of the New Orleans, Texas & Mexico?

A. Yes, sir; he was chief accounting and financial officer of the New Orleans, Texas & Mexico line—the New

Orleans, Texas & Mexico, shortly after the Missouri Pacific acquired the securities of the Gulf Coast Lines, N. O. T. & M. and others.

Q. But generally speaking in connection with the financial matters affecting the operation of the railroad did the New York or Cleveland treasurer have anything at all to do with those matters?

A. Well, I cannot necessarily answer on that. I think though, the former treasurer is here, and he can answer that for himself.

Q. Yes, that is true, Mr. Eckart. The reason why I am asking you that question is because you were the auditor, the general auditor. A. The general auditor.

Q. And all of the records ultimately came under your supervision and under your investigation, you had to submit these reports to the Interstate Commerce Commission, and you signed these reports that were submitted to the Interstate Commerce Commission? A. Yes, sir.

Q. And because of that I thought you would know just how these matters were handled?

A. I don't know. The records, of course, will show you. You have been going back into a long time ago, and my memory would not serve me correct for twenty years back.

Q. Can you state in your own language, please, what you understood the relationship to be between your auditing office in Houston and the treasurer's office in New York, or Cleveland? A. What the relation was?

Q. The relationship was, yes; what liaison did you have, how did you carry on relations, one with the other? What was the nature of the contact? I am making this very general so that you can answer? A. We had no contact—

Q. Contact.

A. Contact with the—immediate contact with the New York or Cleveland office.

Q. You did not?

A. No, and all we saw was what we got in the way of account current, and advances as made from time to time. As I say, the records will show exactly what that was.

Q. Did you have much communication with the New York treasurer's office?

A. We had no connection with the New York office; it was handled through St. Louis.

Q. You, in Houston, had none? A. No, sir.

Q. And the Houston office had none with the New York office? A. No, sir.

Q. The office in St. Louis was that of the Missouri Pacific? A. Yes, sir.

Q. Isn't that correct? A. Yes, sir.

Q. And that is the reason why you cannot state just what the relationship was between New Orleans, Texas & Mexico, and Houston, and the New York treasurer's office? A. Yes, sir.

Q. You say that for a while Mr. William Wyer ran the New York treasurer's office of the New Orleans, Texas & Mexico? A. I believe that is correct.

Q. And then when the New York treasurer's office was moved to Cleveland, and became the Cleveland treasurer's office, Mr. Wyer continued to run that? A. Yes, sir.

Q. And the relationship by communication which you testified to before which existed between St. Louis and New York, now became St. Louis and Cleveland, or Cleveland and St. Louis? A. That is logical.

Q. And that is correct? A. That is correct.

Q. Mr. Eckert, inasmuch as you have been an auditor for so many years, of course, one of the first things that you learn and one of the things you undoubtedly learn best were the accounting rules of the Interstate Commerce Commission prescribing methods of accounting to be used by the various railroads? A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. And am I not correct in understanding under the Interstate Commerce Commission rules, the books of account of the railroads must be kept solely in accordance with Interstate Commerce Commission requirements and regulations? A. That is correct, sir.

Q. That is, you cannot have any sets of books that other private industries, and private corporations may have?

A. That is correct.

Q. Did you ever check, or see, the books of the New York treasurer's office? A. No, sir.

Q. You never did? A. No.

Q. You never checked, or audited, the books of the Cleveland treasurer's office?

A. No, sir; that was done by Mr. Johnson's office in St. Louis.

Q. That was done by Mr. Johnson's office in St. Louis?

A. Yes, sir; it was under his jurisdiction.

Q. Now, there was introduced into evidence this morning a category found in the Interstate Commerce Commission accounting regulations, describe as "other unadjusted debits," you are acquainted with that category, are you not? A. Yes, sir.

Q. Will you tell me, Mr. Eckert—I show you an annual report filed by the New Orleans, Texas & Mexico, with the Interstate Commerce Commission, taking one at random, for the year ended December 31, 1931, and ask you to turn to the schedule that shows the item, "other unadjusted debits."

A. I have here the annual report of the N. O. T. & M. for the year ended December 31, 1931, that shows on—

Q. The balance sheet?

A. The balance sheet account on the assets side, "other unadjusted debits."

Q. That item, "other unadjusted debits," appears on each one of these balance sheets, assets side of these reports filed with the Interstate Commerce Commission, does it not? A. Yes, sir.

Q. And this report was signed by you, was it not?

A. Yes, sir; this also shows, "other unadjusted debits," this is ended December 31, 1932.

Q. Now reading from the balance sheet, asset side, as a debit in the report filed by New Orleans, Texas & Mexico, with the Interstate Commerce Commission, and signed by you, we come to schedule 200a, on page 200, which is general category of unadjusted debits, now although the term of unadjusted debits, it is on the asset side of the balance sheet, because it is an asset, isn't that correct?

A. Yes, sir.

Q. And the balance sheet on the asset side—I assume the reporter is getting all the answers of Mr. Eckert, although he is just nodding his head—coming to schedule 200a, which is one, at least shown on balance sheet, asset side on page 200, we find as the first broad category of assets as investments; that is correct, is it not?

A. That is correct.

Q. There are a number of sub heads under the general category of investments, correct? A. That is correct.

Q. Then immediately below that general category of investments is the general category known as current assets? A. That is correct.

Q. And under this caption or category of current assets, there are a number of specific items, subdivisions of current assets? A. That is also correct.

Q. And immediately below that, I am still dealing with the asset side of the balance sheet, is a third category of assets, which are categorized as deferred assets, is that correct? A. That is correct.

Q. And there are several subdivisions under that category of deferred assets? A. Yes, sir.

Q. And as a final category on the asset side of the balance sheet, there is this category of unadjusted debits?

A. That is correct.

Q. That is the lowest category on the asset side of the balance sheet, isn't that correct?

Mr. McConaughy: Wait a minute—,

Mr. Brandwen: Lowest in physical arrangement.

A. That is the last item; yes, sir.

Q. Now, do you know what an unadjusted—do you know how the Interstate Commerce Commission defines an unadjusted debit? A. Yes, sir.

Q. Now, let us deal with the categories under, let's say sub divisions, rather, under the category of unadjusted debits; the first one given here is loss and insurance premiums paid in advance. A. Yes, sir.

Q. That needs no explanation; that is clear?

A. That is clear.

Q. The next one, and I am reading these all in the order in which they appear, is "discount on capital stock"? A. Yes, sir.

Q. And that we need not pause on for the moment, and the one immediately below that is "discount on funded debt," and that we need not pause on for the moment, and the one below that is "property abandoned charged to operating expenses," and we can pass that up for the moment. A. Yes.

Q. Then you have a subdivision still under the general category of unadjusted debits, "other unadjusted debits,"

and that is the last item that is footed on that page, before the grand total, is that correct? A. That is correct.

Q. Now, the item, "other unadjusted debits," has alongside of it: "Page 219." And going to page 219, you find "schedule 226," called "other unadjusted debits." Now, you are, I assume, fully acquainted with the make-up of the item called, "other unadjusted debits," as defined by the Interstate Commerce Commission in its regulations?

A. Yes.

Q. And coming to the analysis of the other unadjusted debits; that is, going from the balance sheet to particularization of the subsequent page, we find in Schedule 226, on page 219 of the report filed by the New Orleans, Texas & Mexico with the Interstate Commerce Commission, as of December 31, 1932, the following items: The first one reads as follows: "Suspense debit account, minor items, thirty-one in number, each less than $50,000.00; $127,763.60." Do you understand that minor items in this account of less than $50,000.00 then can be included in this "other unadjusted debits"?

A. According to the classification.

Q. I will skip one item for the moment, and I will come back to that: The next item in "other unadjusted debits" there, is "freight in transit, $80,835.47." Would you please explain why you put that item in "other unadjusted debits"?

A. That item probably had not been collected.

Q. Would you say that this item comes within the category of the Interstate Commerce Commission regulations, which says, and I am quoting just this part of it: "That this account shall include or account for all balances in the suspense account that cannot be entirely cleared or disposed of until additional information is received." Would you say that comes within that category?

A. That is account 727.

Q. Yes, that is account 727. I am talking about 727, which for the record is the number assigned to that account, "other unadjusted debits". A. Yes.

Q. It is true, is it not, Mr. Eckert, that in Interstate Commerce Commission regulations, accounting regulations, each one of these accounts has an account number?

A. Yes.

Q. So that "other unadjusted debits", is account No. 727, and I was reading from the Interstate Commerce Commission regulation for account No. 727, and I ask you whether it is not a fact that the reason you included the item "freight in transit" of $30,835.47, was because it was one of those items in the suspense account and could not be entirely cleared, or disposed of until additional information was received?

A. Or although the money had not been collected.

Q. If it were, for example, freight, or claim that was definitely ascertained, wouldn't you have put that in the accounts receivable? A. Yes.

Q. In the accounts receivable? A. Yes.

Q. But you put this in "other unadjusted debits," which is not the accounts receivable?

A. I will—I might have to explain the interline freight account to you on that.

Q. All right.

A. That is, if you have interline freight that moves on waybill, for instance, from Brownsville to New York, that freight might be delayed and the money might not be collected, or might not be reported in interline account, for maybe two months or three months later; that is probably what that is made of.

Q. And might there not be any question about what the amount would be?

A. We know pretty well what the amount is from our records.

Q. But there is still some information to be obtained, is there not?

A. There might be some information to be obtained, yes.

Q. And that is why you put it in the "other unadjusted debits" category rather than the "accounts receivable"?

A. Yes.

Q. Now, you have one other item, that is the one we discussed, "minor items in this account of less than $50,000.00". We do not have to discuss the others. Then we come to one other category which is described here, still dealing with "other unadjusted debits" as the "family lines account, open accounts with affiliated companies to be applied in offset settlement at time of adjusting liquida-

tion of all accounts due to or from affiliated companies, and the figure is $15,267,538.70. I am reading this correctly, am I not, Mr. Eckert? A. Yes, sir; that is correct.

Q. Mr. Eckert, I ask you to refer me to any place in the accounting regulations or classifications of income, Profit and Loss and general balance sheet accounts of the Interstate Commerce Commission which is known as a family line account.

A. Well, I might say this, that you apparently are taking issue with the examination made by the Interstate Commerce Commission of our accounts. They were audited regularly and they passed these accounts as they were with certain exceptions which were assented to when we were wrong. I don't understand we were wrong in making the report that way, if that is what you are getting at.

Q. No; I am just asking if there is any place that you can refer to—

Mr. McConaughy: I don't think that is a proper question. He is asking this witness to interpret the regulations of the Interstate Commerce Commission. That will be for Your Honor to do.

The Court: He may answer.

A. I don't know where else you would go to get it, if you had some family line bills subject to offset that could be made at a later time, and, as I said a while ago, it was approved by the Interstate Commerce Commission.

Q. We will deal with that a little later on. I am not going into that at the moment. I am trying to get some information about a certain matter that the Interstate Commerce Commission may not have gone into, or may not have been interested in going into. That is another matter. I simply ask you whether there is any place in the classification, to which you can refer, that deals with family line accounts, if there is any such place.

A. I don't think there is anything mentioned in family line accounts, but it falls within that category.

Q. According to your interpretation. Look at Account 727, "other unadjusted debits", and the description given by the Interstate Commerce Commission, and tell me what in that account, or that definition, family line account, or

in what respect family line account fit or fits into any part of that description, Account 727.

Mr. McConaughy: Mr. Eckert has said they would go in there. Why should he have to explain it, if it is his opinion that it would appear in there.

The Court: He may answer.

A. "This account shall include"—excuse me.

Q. You are reading from Exhibit 42?

A. Account 727 says this, under "other unadjusted debits":

"This account shall include the amount of debit balances in suspense account that can not be entirely cleared and disposed of until additional information is received."

I take it that that means carries with it inference that debit balances in suspense account couldn't be entirely cleared and disposed of until setoffs could be made in the account.

Q. When you say "setoffs could be made in the account", will you please explain that a little more? I don't quite follow you there. I just want it explained.

A. We had a group of railroads there, about fifteen. We were making advances one to the other when they needed the money, and the New Orleans, Texas & Mexico was the clearing house for all traffic balances, inter-line freight, and other balances. They collected the money. As the amount was collected statements were made as between the different lines in the group. Sometimes other lines were not able to pay N. O. T. & M. and N. O. T. & M. paid them something, even when they couldn't make an offset.

Q. You mean when subsidiaries of N. O. T. & M. couldn't make an offset?

A. Yes. That is a family line balance and, as I said a while ago, was approved by the Interstate Commerce Commission.

Q. Am I correct, Mr. Eckert, in understanding that this item of family line account means that these are bills due from various of the subsidiaries of the New Orleans, Texas & Mexico to New Orleans, Texas & Mexico, as of December 31, 1932?

A. Yes, that is correct, that is the account.

Q. And that is correct, these represent bills due?

A. Not bills, but balances.

Q. Balances due and payable from various subsidiaries of the New Orleans, Texas & Mexico to New Orleans, Texas & Mexico? A. That is correct, sir.

Q. And these balances are made up originally from bills and vouchers, are they not?

A. Well, mostly bills and vouchers, and also from balances in the account, and traffic balances and things of that sort.

Q. You have a voucher for each item?

A. Were ordinarily issued.

Q. For each item in the family line? A. Yes.

Q. Do you think you have any records which would indicate the component elements of these family line accounts amounting to $15,867,538.70 according to the various subsidiaries of the New Orleans, Texas & Mexico? In other words, do you have records which will disclose how much of this fifteen million odd dollars was owed, as of December 31, 1932, by St. Louis-Brownsville to New Orleans, Texas & Mexico, how much was owed to New Orleans, Texas & Mexico by Beaumont, Sour Lake and Western, and so forth? A. I haven't it here, but I can get that.

Q. You can get that? A. Yes, sir.

Q. May I ask you to get that? A. Yes.

Q. We tried to get those records before, but were not able to get them. I will appreciate it if you will make a note of that.

Mr. McConaughy: May that be stated in the form of an exhibit, so he can present it that way?

Mr. Brandwen: I will be delighted to have that.

The Witness: You want to know how this account of fifteen million dollars is made up?

Q. Yes, according to—

The Witness: Roads?

Q. And also if you can state any other further details, just what they consisted of by categories.

Mr. McConaughy: What was the date?

Mr. Brandwen: December 31, 1932.

Mr. McConaughy: May we also have that for December 31, 1931, for comparative purposes?

Mr. Brandwen: That is perfectly agreeable to me.

The Court: You can get that in exhibit form.

Mr. Brandwen: While you are doing that, since the amount is much smaller, could you get that for December, 1924?

The Witness: I think I have to get that from Houston. It will take a little time to get it, but I think I can get it. If I can get it I will do so.

Mr. Brandwen: Fine. Thank you, Mr. Eckert.

Q. Do you know, Mr. Eckert, when the item of family line accounts, under a category of "other unadjusted debits" first appeared in your reports to the Interstate Commerce Commission? A. I don't recall now.

Q. You don't recall now? A. No.

Q. As stated before, there were vouchers and bills in most instances of those items that were included in family line bills; that is correct? A. That is correct.

Q. Now, when a voucher was made which constituted a charge—let us say a charge from St. Louis, Brownsville and Mexico in favor of New Orleans, Texas & Mexico, who determined what category that charge should go into?

A. I will have to ask counsel what you mean by "category".

Q. Well, who determined, for example, whether, when a voucher was made, a charge against the St. Louis, Brownsville and Mexico in favor of the New Orleans, Texas & Mexico, for example, who determined whether it should go to one of these items of current assets, or one of these items of deferred assets, or one of the items of unadjusted debits, or one of the items of other unadjusted debits, or family line bills? Who determined where that item should go?

A. The charge distribution on the voucher would show where the debit would go to, what debit it would go to.

If it was paid currently that would go into current assets. If it was paid later it would go down into the other classification.

Q. Were not these matters passed on by some people in your organization, as to how they should be classified?

A. Usually, it was left to the Chief Clerk in the department that made the distribution on the voucher.

Q. Did not the distribution have to be passed on by other people than the Chief Clerk?

A. Well, vouchers were signed by my assistant or myself.

Q. So that, not until a voucher was signed by you or your assistant—what was your assistant's name?

A. Mr. Banks.

Q. A distribution did not become operative—the distribution of that voucher to a particular account did not become operative?

A. I wouldn't say that. I may have been away.

Q. Then your assistant—

A. A voucher, of course, had to be approved.

Q. By whom?

A. Either by myself or, as I said, by my assistant or myself.

Q. Did you have occasion, with respect to some of these vouchers, to speak to any of your superior officers as to how they should be dealt with? A. No, sir.

Q. You never did?

A. No, sir. We had vouchers there that we piled up and as we could pay them we paid them. As we could make offsets we made offsets. You call it set-off. Some were left behind.

Q. Some were left behind? A. Yes.

Q. Even though others in subsequent months were paid?

A. Yes.

Q. What were the circumstances which induced you to leave some behind when others made at later days were paid?

Mr. McConaughy: Has he testified that there were others at later days?

Mr. Brandwen: He said some were left behind. You can't leave some behind unless they are paid later.

Mr. McConaughy: The question assumes they were paid out of order.

Mr. Brandwen: Mr. Eckert just said some were left behind. Ordinary English warrants no other connotation.

Q. Is that not correct, Mr. Eckert?

A. Yes; sometimes we didn't have the money to make the offset. In other words, we didn't have enough money on one side of the account to offset with the other side of the account, with the other railroad.

Q. Let me have this very clearly, so there will not be any question on the record as to what we are talking about. Let us deal, at the moment, only with one category of these vouchers that finally got into family line bills, that were distributed to family line bills, that were characterized as family line bills, that is, a charge—confining ourselves to one company alone, for the moment—a charge against St. Louis, Brownsville and Mexico running to New Orleans, Texas & Mexico. Isn't it a fact, for example—not to make it hypothetical, I will read from an exhibit. Dealing, for example, with St. Louis, Brownsville and Mexico alone, we find, for example, that in May, 1928, Voucher No. F-1710—would that be a voucher number? A. Yes, sir.

Q. The total of that is $103,587.57. Isn't it a fact that what that means is that St. Louis, Brownsville and Mexico was charged that month, by that voucher, with $103,587.57 and the charge was in favor of the New Orleans, Texas & Mexico; that is correct? A. Yes.

Q. That charge was not paid that month?

A. I am not in a position to verify the amount you have given in the voucher, without referring to the records.

Q. Subject to the records.

A. If it is a hypothetical question, all right, I will answer it that way.

Q. These are figures obtained from Mr. Banks, but they are subject to correction, that is understood.

On Voucher F-1710, isn't it a fact that there is attached to that voucher either one bill, or a series of bills, rendered to the St. Louis, Brownsville and Mexico, aggregating the amount of $103,587.57? A. That is correct.

Q. That is correct? A. Yes.

Q. Now, that voucher was still unpaid as of December 31, 1933, according to Journal Entry No. 56, which you drew up on December 31, 1933, when you transferred—

A. That is correct.

Q. —these unpaid family line bills to investment account, in the subdivision of advances to affiliates; that is correct? A. Yes. I say it is correct. I assume—

Q. Subject to correction. If any of these dates or figures that I am giving are found by you, after your own careful examination, are not correct, of course I want to have them corrected.

Now, the information obtained from this Voucher F-1710 indicates that these are charges made by the New Orleans, Texas & Mexico against St. Louis, Brownsville and Mexico for joint expenses pooled during the month? A. Yes, sir.

Q. And that has not yet been paid. The next voucher that we find that is unpaid, of St. Louis, Brownsville and Mexico, is voucher for October, 1928, F-1861, amounting to $150,800. Now, would you want us to understand that there were not any vouchers entered during the period from May, 1928, to October, 1928, which were charges against St. Louis, Brownsville and Mexico and in favor of New Orleans, Texas & Mexico during that period?

A. I take it that you are reading from a list which has lapses between those two months?

Q. Between May and October—June, July, August and September, four months.

A. If these other vouchers that you read, the first one is still open, then the ones intervening must have been paid.

Q. They must have been paid? A. Yes, sir.

Q. So, if we find that vouchers, charges of St. Louis, Brownsville and Mexico against them, in favor of the New Orleans, Texas & Mexico, for the month of May are still unpaid and those for June, July, August and September were paid—paid, we assume, by St. Louis, Brownsville and Mexico on their behalf; is not that correct, otherwise the vouchers would still be here unpaid?

A. Of course, the other vouchers are probably offset. There might have been some odd amount that we couldn't use that one in May, 1928, for.

Q. When you say "odd amount" what do you mean?

A. Well, if we had vouchers for $275,863.22 we would try to get a voucher from the other side in order to clear that amount, the same amount, or pay a small difference in either direction.

Q. You allowed the May, 1928, voucher to be unpaid although vouchers of four subsequent months were paid?

A. I can not answer that.

Q. I would like you to check that. I would like to know why they were not paid, what the vouchers were for, because all of these vouchers, you must admit, are in odd amounts, because they are the addition of bills.

A. What year is that, Mr. Brandwen?

Q. Mr. Eckert, what I am reading from is the list of the unpaid vouchers for charges made on or before April 1, 1933, that were still unpaid, on or before April 1, 1933.

The Court: How many are there?

Mr. Brandwen: There are quite a number. They amount to fifteen million odd dollars. I am not going to read them.

The Court: You want this witness to check all of them?

Mr. Brandwen: The group of these vouchers?

The Court: Yes.

Mr. Brandwen: You can get up a schedule very simply, stating that a group of these represent joint operating expenses, a group of them represent fuel oil—

The Court: I don't know whether he can or not.

Mr. Brandwen: As to the nature of them. I don't want to have many details.

The Witness: I will find out at noon.

Mr. Brandwen: So we can have that in concrete form, just what these bills were for. I don't want details with respect to each one. There are a number of them that repeat themselves, month in and month out. For example, from the test checking that we did we found a great number of these were in the category of proportion of joint expenses, power, that were charged to St. Louis, Brownsville and Mexico, so that—

Mr. McConaughy: Your Honor, I fail to see the materiality of it. This is the St. Louis, Brownsville and Mexico he is talking about, an obligation to the New Orleans, Texas and Mexico.

Mr. Brandwen: If Your Honor please, may I explain the materiality of this?

The Court: I wish you would. That will help the Court.

Mr. Brandwen: I shall be pleased to.

As one examines the balance sheets of the New Orleans, Texas & Mexico for the various years from 1924 to 1932, one sees a constant increase in the amount of the sums due and owing from the various subsidiaries of New Orleans, Texas & Mexico to New Orleans, Texas & Mexico. We find that steadily and constantly increasing year by year; the bills that are rendered to the various subsidiaries by New Orleans, Texas & Mexico to their various subsidiaries have not been paid, and that the amount is increasing steadily, year by year, and in some years the amount has increased as high as four million dollars, and you find these items carried in "other unadjusted debits" right along, and that they were not paid.

We find that when Mr. Thompson came in as Trustee, one of the first things he did was to take it out of that category and put them into advances to affiliated companies, and they have not been paid to this very day.

Now, it is extremely important, for the purpose of determining surplus, balance sheet assets, whether, when you have bills due and owing from these various subsidiaries for all these years, that are unpaid, whether they could be used as part of the surplus for the purpose, even, of considering the payment of dividends.

If Your Honor please, I seek to establish that every single dividend—although I don't have to do that for the purpose of this case, for the purpose of sustaining our position—I seek to establish that every single dividend paid by New Orleans, Texas & Mexico was paid out of capital and was an illegal payment. I repeat, for the purpose of sustaining my position, I don't have to go anywhere near that far. I hope to establish that every single dividend was paid out of capital, in violation of law.

The Court: You are talking about—

Mr. Brandwen: From January 1, 1929, to December 31, 1932, that every single dividend paid was paid out of capital, and that the purpose here was to keep this stock on a dividend basis so that the market might reflect the fact that they had here a stock that was declaring dividends, and that all these things were done under the domination and under the control of certain people, who were not interested in the operation of a railroad, but who were interested in financial matters, to see what they could do in a financial way on the street. I mean Wall Street and the financial market-place. That is why I am going into this, because of that very definite, very marked relationship.

Mr. McConaughy: It is all very interesting, but he asks for an explanation of these various obligations. He has got the amount of them and the general character of them. I can't see why he should ask Mr. Eckert to go to a tremendous job to make out a list of these items when he has had the books in front of him.

Mr. Brandwen: Let us lay that specter aside, once and for all. We asked for these particular vouchers. We haven't yet been able to get them. I am not complaining, but the fact is that we were not able to get them, but for them to say that, when we asked for them and have not been able to get them, that we have had them a long time, I think bespeaks a statement that has no basis. I say that when comments are—

Mr. McConaughy: I don't see—

Mr. Brandwen: Let me finish. I say that comment on a basis of knowledge is one thing, but they don't know about this. We have tried to get them, and I am not registering any complaint at all with respect to that. Mr. Eckert very generously says he will try to get them, and we hope he can do so. I don't see any reason why we should not get them. If he is going to do it as he says, get them up in schedule form, what is lost thereby? Is the loss that Your Honor might have some information about this, and this whole situation of family line deals will, once and

for all, come out into the open, and we will know what we are talking about? Is that the concern?

When a statement is made that there is not a single dividend that has been paid except out of capital, and that this is one of the ways of demonstrating that, I think it is most important that we have everything that throws light on what the actual situation was.

Mr. McConaughy: If he is contending that there is something the matter with these particular items in this account, that is one thing. He has not said that.

Mr. Brandwen: I am contending that there is a lot wrong in this account. All I want to say is that we can very well use the phrase that Hamlet used about things in Denmark.

Mr. McConaughy: The Court is entitled to know.

Mr. Brandwen: I am trying to get that proof from the witness. I don't expect the Court to take my statement as testimony. I expect to establish this through the witness, an intelligent witness, who is auditor for these roads who is in charge of all these things.

Mr. McConaughy: He says he is seeking for something that may be wrong; he don't know.

Mr. Brandwen: I am saying there is something wrong, and far more than we will ever have time to disclose to this Court, but we will disclose enough so we can sustain our position. What I say is not competent testimony, but I want to show what is wrong, through these witnesses, one of whom is Mr. Eckert. I am sure Mr. Eckert will take care of himself, and will be delighted to see that the Court has all the information that bears on this.

The Court: I can not see that what you are asking for now is necessary, from anything you say you will attempt to show. If Mr. Eckert thinks he can furnish the information the Court will let him do it. It is hard to see that you can find anything that will be relevant at this time.

Mr. Brandwen: If Your Honor please, if, for example, you include certain items in an earned surplus account

on which you rely for the purpose of declaring a dividend, and if those items don't belong there, if they are improper items and if they are not assets, it must follow as night follows day, that you don't have a surplus if those items are greater than the amount of surplus shown, and a dividend being declared out of capital. I feel, if Your Honor please, that it follows with axiomatic inevitableness that not only is it relevant, but the connection is so imperative that it can not be escaped. I mean, if anything is relevant that is most relevant.

The Court: Very well, you may proceed.

Mr. Brandwen: Q. I understand you are going to try to get this?

The Witness: I said I would make an effort, yes.

Mr. Brandwen: I appreciate that, and I think it would be probably more appropriate if I don't go into the details on these specific items any further, until we have further word from Mr. Eckert with respect to the schedules, so that we can deal with them in a more concrete fashion.

The Witness: Your Honor, let me ask counsel a question, if I may?

The Court: Yes.

The Witness: Do you want that broken down by different kinds of vouchers; do they cover, for instance, fuel oil so much? You don't want that detail?

Mr. Brandwen: No, no; I would just like broad categories—fuel oil, joint expense, and things like that. I want to have the task made very simple for you.

The Court: You can determine that during the noon hour, you say?

The Witness: I will try to, Your Honor, if I can. It will take some little time to do it, but if I can I will.

Mr. Brandwen: Would it be Your Honor's wish—

The Court: Do you desire to proceed along some other line?

Mr. Brandwen: I think it might save everybody's time if we can give the witness a little more time for this.

The Court: We will adjourn at this time until two o'clock.

Thereupon, at 12:00 M., a recess was had until two o'clock P. M.

MARTIN ECKERT,

having been heretofore duly sworn, upon resuming the stand, testified further as follows:

Direct Examination (Continued)

By Mr. Brandwen:

Q. Mr. Eckert, have you been able to get any schedules on the subject matter that we inquired about this morning?

A. Mr. Counsel, I find that it will take a great deal longer than we thought it would to get the details of all the four lines, but I have one for the St. L. B. & M., which is the larger ones for the years 1928, 1929 and 1930, 1931, 1932 and 1933, in toto, the St. L. B. & M. only; to get the other will take perhaps a week. I have to get that from Houston.

Q. You don't have the Beaumont & Sour Lake here?

A. I do not, no, sir. And then there was another exhibit which I could continue work on this afternoon, that is on the vouchers as of April 1, 1933, of the St. L. B. & M. to the N. O. T. & M. I could probably have that tomorrow. This will take about a week to get this up, if you want to accept it.

Q. You say this will? A. I mean the other three lines.

Q. These are all the same, these are copies? A. Yes, sir.

Mr. Brandwen: I assume you gentlemen have already seen these?

Mr. McConaughy: Yes.

The Witness: I understood that that was about the form you want it in, Mr. Counsel.

Q. (By Mr. Brandwen) Well, I want to say that I appreciate any information that we can get from you, Mr. Eckert. A. Thank you, sir.

Q. What is that? A. Thank you.

Q. And I have just seen it. I would like to look at this. What you have just handed me, Mr. Eckert, is a schedule from the St. Louis, Brownsville & Mexico Railway Company? A. That is correct.

Q. That is correct, is it not? A. Yes.

Q. And you call this an analysis of amounts due New Orleans, Texas & Mexico from St. Louis, Brownsville & Mexico? A. Yes, sir.

Q. That is correct, is it not? A. Yes, sir.

Q. And you say here that this total amount for these years which you have here on this schedule from 1928 to 1933, broken up according to years, you say were transferred from Account 778. Account 778 is what?

A. That is "other unadjusted credits".

Q. That is "other unadjusted credits—family line bills"?

A. No, not necessarily. Other unadjusted credits is the style of the account in the classification.

Mr. McConaughy: May I interrupt a second, Mr. Brandwen. Since there is a considerable amount of testimony about this paper, may not it be marked for identification?

Mr. Brandwen: Oh, yes. Mark this, please.

(The same was marked by the Reporter as Comstock Exhibit No. 43 for identification.) [See Vol. of Exs. p. 102.]

Q. (By Mr. Brandwen) Did you prepare this exhibit 43 for identification yourself, Mr. Eckert? A. I did not.

Q. Who prepared it? A. It was prepared in Houston.

Q. Prepared in Houston? A. Yes.

Q. I see. Do you know who prepared it in Houston?

A. No, sir, I do not.

Q. When did you receive it here?

A. I received it here a few days ago.

Q. Do you know who requested you to send this schedule here?

A. Well, I think the request came from, partly from me to pick up a lot of analysis in connection with this hearing.

Q. And who requested you to pick up a lot of analysis, as you stated, for this hearing?

A. I did that myself, a lot of it, because I wanted to be prepared if I had to get on the stand.

Q. Did anybody also join in this request?

A. Mr. Peet was with me on it, my assistant, Mr. Peet, he worked on a lot of detail of it.

Q. Now, then, account No. 778 on the books of the St. Louis, Brownsville & Mexico Railway Company, is called other unadjusted credits, is that correct? A. Yes, sir.

Q. That denomination indicates a liability on the part of the St. Louis, Brownsville & Mexico Railway Company to N. O. T. M., doesn't it? A. Yes, sir.

Q. And you say of this schedule, this was transferred to account No. 757. What was account No. 757?

A. Non-negotiable debts to affiliated companies.

Q. [None]-negotiable debts to affiliated companies. Where is that in the balance sheet of New Orleans, Texas & Mexico? A. Amounts payable to affiliated companies.

Q. Look at balance sheet—the latest one I have here, I think, is December 31, 1932, from the annual report filed by you with the Interstate Commerce Commission?

A. Nothing shown here on the N O T M.

Q. Is there a category on the N O T M balance sheet called 757, non-negotiable debts to affiliated companies?

A. Oh, yes, there is open accounts, non-negotiable debts to affiliated companies under notes.

Q. What is the general category under which this subdivision appears? A. Open accounts.

Q. And is there another category above the term "open accounts"? A. Yes, sir.

Q. What is that? A. Notes.

Q. May I see that, please, where you read it from?

A. (Witness indicates)

Q. But this is on the N O T M. Would you transfer this to a liability of N O T M? You don't mean that, Mr. Eckert, you can't mean that. A. Well, they had some—

Q. Would you listen to my question again, please, because I am quite sure, if your Honor Please, either Mr. Eckert misunderstood—

The Court: Read the question.

(Last question read)

Mr. Brandwen: May I ask this question, please?

Q. You are now looking at the annual report of New Orleans, Texas & Mexico filed with the Interstate Commerce Commission. St. Louis, Brownsville & Mexico was indebted as of December 31, 1932, and as of December 31, 1933, to New Orleans, Texas & Mexico, according to the schedule which you have here, in the amount of $10,667,331.10, which was unpaid by St. Louis, Brownsville & Mexico as of that date, and that that debt ran in favor of New Orleans Texas & Mexico. Is that not correct?

A. Yes, and that debt was due to the N O T M.

Q. Those amounts were due to N O T M? A. Yes, sir.

Q. And they had been carried up to December 31, 1933, on N O T M. balance sheets as "other unadjusted debits—family line bills", is that not correct?

A. It is carried in this report in account 727, other unadjusted debits on the asset side of the balance sheet.

Q. On the asset side? A. That is correct.

Q. And if you will look at the reference in account 727, in the balance sheet contained in the volume from which you are reading, you will find that it refers to a breakdown of the other unadjusted debits, and if you look at the breakdown on that report you will find the amount of family line bills stated for the entire—that are due to N O T M, from the various subsidiaries, is that not so?

A. That is correct. This happens to deal with the year 1932.

Q. Yes.

A. The statement I gave you is for the year 1933.

Q. The statement that you gave me deals with the years 1928, 1929, 1930, 1931, 1932 and 1933, and they are aggregated? A. Yes.

Q. That is correct? A. That is correct.

Q. And the amount that was added in the year 1933, according to your statement is $452,993.35?

A. That is correct.

Q. Out of a total of $10,664,331.10. Now, the item ap-

pearing in the annual report filed by you with the I. C. C. on behalf of the New Orleans, Texas & Mexico, with the Interstate Commerce Commission, as of December 31, 1933, shows all the amounts due in family line bills from the various subsidiaries of N O T M to N O T M., is that not correct? A. That is correct.

Q. The schedule that you handed me this afternoon, this exhibit 43 for identification, shows how much of the total amount of family line bills unpaid and owing to New Orleans, Texas & Mexico, were represented by family line bills from St. Louis, Brownsville & Mexico alone, is that not correct? A. That is correct.

Q. All right, we have that straight. Now, on December 31, 1933, through a journal entry after the trustee was appointed, you did something with respect to these other unadjusted debits—family line bills which you have in the balance sheet, and I ask you what did you do?

A. Well, we transferred the amount up into 706-D.

Q. 706-D. And what is 706-D?

A. 706-D is investments in affiliated companies—D advances.

Q. Now Mr. Eckert, when you say in this schedule of St. Louis, Brownsville & Mexico Railway Company, that the amount of $10,666,331.10, which as shown on the books of St. Louis, Brownsville & Mexico prior to the journal entry on December 31, 1933, was carried in the opposite column to unadjusted debits, the column in St. Louis, Brownsville & Mexico being called other adjusted credits—family line bills, isn't that correct?

A. That is correct, yes, sir.

Q. And just as in the case of New Orleans, Texas & Mexico books, when by the operation of the journal entry you transferred the other unadjusted debits-family line bills up to sub-item D advances, under the term investments of affiliated companies, by a similar parity of bookkeeping, when you came to the St. Louis, Brownsville & Mexico books you put that up to the open accounts under non-negotiable debts to N O T M? A. Yes.

Q. That is correct, is it? A. That is correct.

Q. Now, I ask you whether any of the items contained in this exhibit 43 for identification have ever been paid?

A. They have not.

Q. They have not been paid to this date? A. No.

Q. Now, I notice that in 1928, you show here that St. Louis, Brownsville & Mexico owed New Orleans, Texas & [Mexico], the sum of $150,800 for equipment trust notes, as you state here, principal and interest, which was not paid by St. Louis, Brownsville & Mexico. Would you please state what that is?

A. Well, I haven't any further detail here, except this statement. I haven't had an opportunity to examine it very closely, but the statement indicates that it is St. L. B & M equipment trust notes, principal and interest, not paid.

Q. You also show that there were certain operating expenses of St. Louis, Brownsville & Mexico owed by St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico including a proportion of pooled expenses in the amount of $284,530.48, that were not paid during that year. Is that correct—is it? A. Yes, sir.

Q. Isn't it a fact that the amount of $284,530.48 is represented by three vouchers of May, 1928, November, 1928 and December, 1928?

A. I couldn't verify that here without the records.

Q. You know, do you not, that a dividend was declared in 1928, by St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico?

A. It is not indicated on this statement. A dividend declared in 1931—

Q. I am not talking about that. I am talking about 1928. There was a dividend, Mr. Eckert, in the year 1928 declared to New Orleans, Texas & Mexico, of $603,329.

A. $603,112.51.

Q. That is your figure? A. Yes.

Q. $603,112.50? A. 51 cents.

Q. Was that paid?

A. According to this it was, yes, sir.

Q. You say it was paid? A. Yes, sir.

Q. How was that paid?

A. I don't know how it was paid.

Q. Was it paid by check?

A. It was probably by voucher.

Q. What is that?

A. It was probably paid by voucher.

Q. And what was the characterization given to that voucher when that dividend was declared and to take on a voucher form?

A. I don't recall the exact wording of the voucher, that is too long ago to remember the wording.

Q. You still have those vouchers? A. Yes, sir.

Q. Are they here? A. No, sir.

Q. Have you prepared any other schedules for this hearing? A. No.

Q. You have no other schedules? A. No, sir.

Q. But you say this dividend declared in 1928, of $600 odd thousand dollars was paid? A. Yes, sir.

Q. And you cannot state at the moment how it was paid?

A. Except that I think it was paid by voucher, that is my recollection.

Q. By voucher? A. Yes.

Q. And you mean a voucher was just prepared, and that was payment?

A. Oh, the voucher was paid and the money was paid.

Q. I mean you don't know whether a check issued thereafter?

A. No, I don't know whether a check was issued or not.

Q. You can't say now whether this dividend was put into family line bill? A. No, I don't think it was.

Q. You don't know at the moment?

A. No, I don't know definitely, but I don't think it was.

Q. You don't think it was. But you now—this schedule shows that other unadjusted debits-family line bills due from St. Louis, Brownsville & Mexico, to the extent of $435,330.48, which charges were made to St. Louis, Brownsville & Mexico, and which amount was owed by St. Louis, Brownsville & Mexico to NOTM, has not yet been paid?

A. According to this statement it has not been paid, yes.

Q. What is that?

A. According to this statement it has not been paid.

Q. And to your best information it has not been paid?

A. Yes, sir.

Q. Now, we come onto the year 1929. Now, in the year 1929, you state that certain unadjusted debits-family line

bills, certain vouchers charged to St. Louis, Brownsville & Mexico, and owed by St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico, for equipment trust notes in the amount of $99,725. was still unpaid? A. Yes, sir.

Q. Your schedule also shows that bills owing from—

Mr. McConaughy: I would like to object to this line of testimony. He is asking the witness to repeat what the schedule already shows, and it has been marked for identification.

Mr. Brandwen: If your Honor please, I think it is extremely important to have this evidence gone into with a sufficient amount of clarity and a minimum amount of delay, so that we will be in a position, if your Honor please, to show why it is that New Orleans, Texas & Mexico persisted in a course of paying dividends out of capital. That lies at one of the roots of these problems.

Mr. McConaughy: That doesn't answer my objection, Your Honor. All I object to is asking the witness to answer a question which is merely repeating a figure shown on an exhibit already.

Mr. Brandwen: Well, it is not offered in evidence as yet.

The Court: It is not offered in evidence.

Mr. Brandwen: Not offered in evidence. He wanted it identified, and I had it identified. I would like to acquaint myself with these figures, too. It just came in a few days ago, Mr. Eckert said, and as I said, I am not complaining about the fact that we saw this for the first time only a short time ago, although we tried to get the information earlier, but I say I am not complaining about that at the moment.

The Court: All right, go ahead.

Mr. Brandwen: Was there a question?

(Question read as follows:)

Q. Your schedule also shows that bills owing from—

Mr. Brandwen: Q. —from St. Louis, Brownsville & Mexico to New Orleans, Texas & Mexico, for materials and

supplies in the year 1930, of $251,706.41 is still unpaid, that is correct, is it not? A. What is that amount?

Q. I am sorry, $143,642.44. A. That is correct.

Q. And your schedule, exhibit 43 for identification, shows that fuel oil bills owing from St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico, incurred in the year 1929, of $299,887.55 are still unpaid?

A. Yes, sir.

Q. And so also per diem mileage, reclaims and equipment rents of $344,269.73, owing from St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico, in this account of other unadjusted debits-family line bills for the year 1929 are still unpaid? A. That is correct.

Q. And your operating expenses, including a proportion of pooled expenses chargeable to St. Louis, Brownsville & Mexico, due and owing to New Orleans, Texas & Mexico, for the year 1929, are still unpaid? A. That is correct.

Q. Now,—

Mr. McConaughy: Did your Honor have a copy of this exhibit?

The Court: No.

Mr. McConaughy: May I just show it to you? I believe, your Honor, that the witness already testified once that everything on this exhibit is unpaid, and it only repeats it to read this off.

Mr. Brandwen: I am not going to read any more at the moment. I just want to get certain things clear.

Q. Now, then, we understand, of course, that all the items referred to on this exhibit 43, for identification, are unpaid? A. Yes, that is correct.

Q. Now, I am going to deal with several items that don't appear in some of the other years, there are only a few items and I would like to come to those. In 1929, do you know what the dividends declared by St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico was?

A. I have a memorandum which shows $1,039,970.83.

Q. Was that paid? A. Yes, sir.

Q. That was paid. Do you know when? A. I do not.

Q. Do you know how it was paid?

A. Paid like all the others, through voucher, paid to NOTM.

Q. You do not know whether a check was issued thereafter? A. I do not.

Q. Could that information be obtained?

A. I think it could.

Q. May I ask that information be obtained before the hearings are concluded?

A. Do you want the vouchers?

Q. I want to have the history of the voucher from the moment the voucher was set up for the dividends to see just what happened to the voucher once it was set up, pursuant to a declaration of a dividend, and all the steps it went through before it came to New Orleans, Texas & Mexico. A. Yes, sir, that is all for the year 1929?

Q. I am going to ask you that with respect to each of these years, 1929, 1930 and 1931, also 1928.

A. 1928, 1929, 1930 and 1931?

Q. Since you can get them up, while this schedule only goes to 1928, I would like you to get them up for 1926 and 1927, because dividends are reported to have been paid by St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico, during those two years.

A. You understand, Mr. Counsel, that I have to get this from Houston, either by telephone or they will have to read them off. I don't know how quick I can get it.

Q. Will you do the best you can?

A. I will do the best I can.

Q. We tried to get that information, Mr. Delaney did when he was in Houston, and he wasn't able to get it.

A. I don't know why not. They didn't refuse him anything, I don't think.

Q. Well, as Mr. Delaney said this morning, there were certain things he couldn't get, it wasn't a matter of refusal, they weren't available. I mean just at the moment he wasn't able to get the analyses of the "other unadjusted debits-family line bills" for December 31, 1932, he was not able to get it, he asked for it. I am not saying that there was any refusal, all I say he asked for it and was not able to get it. As soon as you are through making a note, you let me know. A. All right, sir.

Q. Now, in 1930, the St. Louis, Brownsville & Mexico Railroad Company declared a dividend in favor of the New Orleans, Texas & Mexico, in what amount?

A. $930,897.99.

Q. And in 1931? A. $4,155,079.73.

Q. Now, I notice in this exhibit 43 for identification, you have dividends on St. Louis, Brownsville & Mexico capital stock declared June 17, 1931, payable to stockholders of record November 30, 1930, as $316,188.85. That was one of the dividends declared during the year 1931, was it not?

A. Yes, sir.

Q. That has not been paid? A. Has not been paid.

Q. That was put into a voucher that went into "other unadjusted debits-family line bills" of New Orleans, Texas & Mexico? A. That is correct.

Q. Please explain the circumstances of your putting that dividend declared on June 17, 1931, by St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico, into "other unadjusted debits-family line bills"?

A. My dear sir, that happened 14 years ago, I don't remember now, but as I told you this morning, offset settlements were made, wherever they could be made, and if I had been as wise then as I am now, I would probably have paid it and it wouldn't have appeared on this statement.

Q. Why do you say if you were as wise as you are now?

A. If I had known of this thing coming up 15 years later I would probably have paid it and it wouldn't have appeared on here. It could have been paid through an offset settlement.

Q. It could have been?

A. I think it could have been, yes, sir.

Q. That could have been paid?

A. I think so, I think those items could have been paid.

Q. But you put them into: "Other unadjusted debits-family line bills"?

A. Yes, sir. It was one of those that was not offset, no special reason for it, it probably could have been done at the time.

Q. That is, you say it could have been paid, that particular voucher could have been paid?

A. I think that one, and the next one, too.

Q. Now, the next one that you are testifying to is the other dividend declared on June 17, 1931, payable to stockholders of record February 28, 1931, in the amount of $338,890.88. That declaration of dividend was never paid?

A. It was not paid.

Q. And that got into the category of other unadjusted debits, family line bills of New Orleans, Texas & Mexico?

A. That is correct.

Q. That was never paid? A. No.

Q. Now, you say both of those dividends could have been paid? A. I think they could have been paid.

Q. They could have been paid?

A. I say I thought they could have been paid.

Q. You thought? A. Yes.

Q. You think now?

A. I think now that they could have been paid at the time.

Q. You think now they could have been paid at the time? A. Yes.

Q. Now, you can't tell us now how it happened then that these dividends declarations, both of which were made on the same day, were put into "other unadjusted debits-family line bills", though? Didn't someone instruct you to put them into other unadjusted debits-family line bills, Mr. Eckert?

A. Yes, I think the Interstate Commerce Commission, checking our records. They also instructed us to put it up in 706, later on, account 706.

Q. You put this into other unadjusted debits-family line bills before the Interstate Commerce Commission knew about it, isn't that so, Mr. Eckert? A. I don't think so.

Q. Isn't that so? A. I don't think so.

Q. You mean to say that the first entry that you made against the "other unadjusted debits-family line bills" or the first voucher that you made for these dividends was only after this was called to the attention of the Interstate Commerce Commission? I ask you to think very hard about that question, Mr. Eckert?

A. I would like to look at the records on that before I give you a definite answer, but as I said this morning, the Interstate Commerce Commission checked our records

almost every year, and I would like to look at the record to see before I answer that definite question.

Q. I think the fact the Interstate Commerce Commission looked at these records subsequently is not responsive to this question. I simply ask you, Mr. Eckert, as auditor of the New Orleans, Texas & Mexico, if you want this court and counsel here to understand—

Mr. McConaughy: Now, wait a minute.

Mr. Brandwen: I want to ask this question. After I have finished my question, won't you please wait until I finish my question?—to understand that you did not make a voucher for this dividend, the two dividend declarations and put them into other unadjusted debits-family line bills before any intimation was given to the Interstate Commerce Commission of these two declarations of dividends?

Mr. McConaughy: Your Honor, I object to this, he has asked that question, and it has been answered. This is not cross examination, he called the witness himself.

The Court: He may answer.

A. I said I would like to look at the record on that. I made a statement that I thought the Interstate Commerce Commission authorized us to put that in account 757. I am not certain about that, and I would like to look at the record before I give you a definite answer.

The Court: You may do so.

Mr. Brandwen: Q. I want to say that the item other unadjusted debits-family line bills is what number? A. 757.

Q. 757? A. Yes.

Q. I show you this document and ask you whether you have ever seen that, or a copy of that before?

A. This appears to be copy of the two vouchers which you have just referred to as being a dividend on the capital stock of the St. Louis, Brownsville & Mexico to the N O T M.

Q. From an examination of that voucher would you state whether you had anything at all to do with the original preparation of it?

A. No, sir, I didn't even sign this voucher. It was not approved by me. It is a memorandum voucher, apparently.

Q. From an examination of the document that I have just shown you, can you state when this was prepared, the original of which was prepared?

A. According to the date at the top, it is shown as July 22, 1931, and apparently audited in June, 1931, account.

Q. Dividends having been declared on June 17, 1931?

A. Yes, sir.

Q. What would be your best information at the present time as to the time when such voucher was prepared?

A. According to the date it shows July 22, 1931.

Q. Isn't it a fact, Mr. Eckert, that no reports had yet been submitted to the Interstate Commerce Commission with respect to this fact by that time?

A. What do you mean no report had been submitted to the Interstate Commerce Commission?

Q. With respect to the declaration of these two dividends referred to in that voucher?

A. This was audited apparently in June, 1931, accounts and if it was audited in June, 1931 accounts, it would be shown in the reports for the end of the month of June, 1931.

Q. And you say it was reported to the commission then, at the end of June, 1931?

A. If that information on there is correct, it probably would have been in the June, 1931, report of the N O T M to the I C C.

Q. And when that report was sent on to the Interstate Commerce Commission as of June 30, 1931, how would this item have been identified, or in what category would these items have been? A. In dividends received.

Q. Dividends received? A. Yes.

Q. Dividends received by New Orleans, Texas & Mexico?

A. Yes. Of course, you are dealing with a figure there I can't check. I would have to verify this from the records. I can't tell you from this piece of paper just what happened. I am telling you now that I would be glad to check it and see what it does show.

Q. And you will check that?

A. I am under oath here and I am on trial, apparently.

Q. Oh, no, Mr. Eckert, you are not on trial, not on trial by me, anyhow. You are under oath, though; that is true.

Now, Mr. Eckert, during that same year of 1931, you recall that there was another dividend of $3,500,000 declared by St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico, and that, according to the testimony already given was declared on June 11, 1931.

A. I beg your pardon, I think it was July.

Q. Excuse me, July 11, as of June 30th? A. Yes.

Q. Was that dividend paid?

A. No. About a million of that was paid, if I recall. I think Mr. Delaney testified to that already.

Q. The books indicate payment of a million dollars?

A. Yes.

Q. Do you know how that was paid, that million dollars was paid?

A. No, I do not, not from memory I couldn't tell you.

Q. But you are going to check on that?

A. I will check on that, yes.

Q. Now, there was still a balance of $2,500,000 on that dividend that had been declared on July 11, but had not been paid in any fashion during that year. Now, in what account of New Orleans, Texas & Mexico, did that $2,500,000 appear, if any?

A. It was in the profit and loss account of the N O T M.

Q. You mean to say that it was treated as income?

A. Yes, in the profit and loss.

Q. As income? A. In the surplus account.

Q. It was treated as income before it gets to the surplus account? A. It eventually goes into surplus.

Q. Then, before it gets there it must go through another channel? A. Dividend received.

Q. Dividend received? A. Yes.

Q. If it wasn't paid how could it be in dividends received? A. Well,—

Q. And if it wasn't paid, and you say it wasn't paid?

A. I don't recall what the exact amount was, I would have to look that up, too. I don't know whether it showed dividend received or not, but that is the logical place for it to go.

Q. Even if it wasn't received?

A. No, if it hadn't been paid it shouldn't have gone in there.

Q. Do you know whether the $2,500,000 was paid?

A. No, not all of it.

Q. The $2,500,000 you know was not paid?

A. No, not all of it.

Q. You know the original dividend, you recall, was $3,500,000?

A. There was about $1,400,000 of it was not paid.

Q. I am talking about as of December 31, 1931?

A. I don't know. The next year I think they paid more of it, so that the only amount left outstanding was $1,400,000.

Q. So that you don't know what happened to, or how, you don't know how this item of $2,500,000 was picked up and treated on the books of New Orleans, Texas & Mexico?

A. I would have to look at the books or the record. I haven't anything here to go by.

Q. Do you have any records? A. It has been so long ago.

Q. Do you have any records in St. Louis?

A. I have the annual reports here to the Interstate Commerce Commission.

Q. Now, I show you the annual report of the St. Louis Brownsville & Mexico Railway Company submitted to the Interstate Commerce Commission for the year ended December 31, 1931, of which you were General Auditor at the time? A. Yes.

Q. And ask you whether by examining page 200-L your recollection may be refreshed with regard to the $2,500,000.00 that according to that report was still unpaid as of December 31, 1931?

A. Item shown in line 23 opposite Dividends Matured Unpaid, $2,500,000.00.

Q. So that St. Louis, Brownsville & Mexico on its report that you submitted in its behalf [fo] the Interstate Commerce Commission for December 31, 1931, shows that two and a half million dollars of that dividend was still unpaid? A. Yes, that is correct.

Q. And in that respect the $2,500,000.00 was just as unpaid as were the two dividends that you have just testified to that were declared on June 17th, 1931?

Mr. McConaughy: If a thing is unpaid, isn't it unpaid, your Honor?

The Court: Yes. If it is unpaid, it is as unpaid as anything else.

Q. (By Mr. Brandwen) Now, the two dividends of three hundred and sixteen thousand odd dollars and three hundred and thirty-eight thousand odd dollars that were declared on June 17, 1931, that are unpaid, were put into the category of family line bills? A. Yes, sir.

Q. That were unpaid? A. Yes, sir.

Q. Where was this $2,500,000.00 of this larger dividend that was unpaid put? A. Well, later—

Mr. McConaughy: I beg your pardon, would you kindly state as to what time you are asking?

Mr. Brandwen: Immediately after the entry was made for the $2,500,000.00 in the year 1931, and ultimately as of December 31, 1931.

The Witness: I didn't get the question.

(Last question read.)

A. I said it was put in the—reported as dividend matured unpaid, and vouchers were probably issued for that amount.

Q. (By Mr. Brandwen) It was not put in the family line bills account? A. No, sir.

Q. So that although you had two dividends declared on June 17th, 1931, that were unpaid, and you had the balance of $2,500,000.00 on the large dividend of $3,500,000.00 of which two and a half million dollars were unpaid, you treated the unpaid dividends differently?

A. Apparently so.

Q. There can be no question about that, can there, Mr. Eckert? A. It doesn't look like it from here.

Q. It doesn't look like there is any question about it? A. From where I sit.

Q. Can you state now—

The Court: It looks like what, Mr. Eckert?

The Witness: It doesn't look like it from where I sit, I said.

The Court: Doesn't look like what?

The Witness: The thing he indicated about the six hundred thousand dollars not being in the same—put in the same plane with the $2,500,000.00. The $2,500,000.00 shown in there, your Honor, as dividends matured unpaid, and the $665,000.00 is not in there, that is what he is talking about; the $665,000.00, on the other hand, was written off to family line bills.

Q. (By Mr. Brandwen) And other unadjusted debits—family line bills, except in dealing with the St. Louis, Brownsville & Mexico, eliminated other unadjusted credit family line bills? A. Yes.

Q. Now, will you please state what the circumstances were which induced a difference in treatment of these unpaid dividends?

A. I don't believe I can answer that question now.

Q. Do you want to check that further?

A. I will check it, yes.

Q. Did you receive any instructions from anyone?

A. No, sir.

Q. You did that on your own?

A. Of course. I was working for a living, just like everybody else is. I was at that time.

Q. I am sure you are now, too, but with respect to a number of these matters, instructions were being issued from other places in the Missouri Pacific Empire, isn't that so?

A. No, I wouldn't say that. We handled those things pretty well down there. These dividends between the St. L., B. & M. were declared by the S. L. B. & M. board of directors under the guidance and legal opinions of one of the men that I thought more of than anybody I think I ever knew in the legal profession, that is, without disrespect to anyone here, Honorable Frank Andrews, of Houston, Texas. He was a great lawyer, and it was on his advice that these dividends were declared.

Q. These dividends were declared? A. Yes.

Q. Do you know whether Mr. Andrews was a director of the St. Louis, Brownsville & Mexico?

A. Yes, sir, a director.

Q. Do you know whether he was present at this meeting on July 11th, of St. Louis, Brownsville & Mexico, where this dividend of $3,500,000.00 was declared?

Mr. McConaughy: I don't think that is a proper question to ask the Auditor.

The Court: Objection sustained.

The Witness: Ask the Secretary about that.

Mr. Brandwen: We had the minute book here, but it was returned to the Trustee's counsel, and the minute book, of course, would be the best evidence on that. I thought since he had taken it back—

Mr. McConaughy: If you will show me in the minute book, that he was present, I will concede it.

Mr. Brandwen: I will do that.

Q. Now, you have a copy of Exhibit 43, for identification, before you, haven't you? A. Yes, sir.

Q. Will you look at the family line, other unadjusted credits here, family line bills, that are unpaid from St. Louis, Brownsville & Mexico, to New Orleans, Texas & Mexico for the year 1931, and tell us how much—what was the total amount of the charges and bills of St. Louis, Brownsville & Mexico due to New Orleans, Texas & Mexico for the year 1931, other than these two dividends on June 17th that you testified to that were unpaid for that year?

Mr. McConaughy: May I have that question, please?

Q. (By Mr. Brandwen) And are still unpaid?

The Court: Read the question, Mr. Reporter.

(Question read.)

Mr. McConaughy: Your Honor, this is gradually working out to the point where Mr. Brandwen will have had the witness testify to practically every figure on this exhibit. Why can't he put it in evidence?

Mr. Brandwen: Well, it was just subtraction, and if the witness will agree, I can simplify it.

Mr. McConaughy: Is there anything about this exhibit that you don't want to put it in evidence?

Mr. Brandwen: I don't see it at the moment.

Mr. McConaughy: Why not put it in evidence, your Honor.

Mr. Brandwen: I want to have the witness comment with respect to some of these things on the exhibit.

Mr. McConaughy: That has nothing to do with the question you have asked him now. You just asked him to state the balance of the account, which is perfectly plain from the face of the exhibit.

Mr. Brandwen: I would like it on there so there can be no question about that figure, so that the Court and no one else would have to do any computing.

Q. Is it not a fact that exclusive of these two dividends of June 17, 1931, which went to family line bills, and are still unpaid, there were charges for various items listed, various categories listed such as material bills, fuel oil, and so forth, operating expenses in the amount of $2268,-561.34, which are still unpaid for the year 1931?

A. That is correct.

Q. The total amount of other unadjusted debits-family line bills of New Orleans, Texas & Mexico Railway as of December 31, 1932, was $10,652,092.00, is that correct?

Mr. McConaughy: Did you say 1932?

Mr. Brandwen: Yes.

Mr. McConaughy: You have the exhibit before you, Mr. Eckert?

The Witness: I don't have the exhibit. He said the amount due the N. O. T. & M. It was $10,664,331.10, was the total.

Q. (By Mr. Brandwen) Let me ask you this: do you know how much of these unadjusted debits, other unadjusted debits-family line bills were paid in the three months, January, February and March, 1933?

A. No, sir, I do not.

Q. And I assume you do not know what vouchers were paid during that period then? A. I do not, sir.

Q. When I stated before that the other unadjusted debit family line bills were $10,652,092.96, I meant to say that they were the other unadjusted debit family line bills

due New Orleans, Texas & Mexico only from St. Louis, Brownsville & Mexico. If the record is not clear on that, I want to make that perfectly clear.

Mr. McConaughy: That still leaves it unclear, because we don't know as of what date you are talking.

Q. (By Mr. Brandwen) As of December 31, 1932?

A. 1932?

Q. Yes, sir.

A. This shows $10,652,092.96. That is the report of the St. L. B. & M. to the Interstate Commerce Commission for the year ended December 31, 1932.

Q. So that we have in the record, the amount due and owing from St. Louis, Brownsville & Mexico to New Orleans, Texas & Mexico, on other unadjusted debits family line bills as of December 31, 1932? A. That is right.

Mr. Brandwen: I should like to offer in evidence schedule that has just been prepared showing the other unadjusted debit-family line bills due from St. Louis, Brownsville & Mexico and Beaumont, Sour Lake & Western as disclosed by the subsidiaries report to the Interstate Commerce Commission.

Q. Those were the two biggest debtors of New Orleans, Texas & Mexico on the family line bills, is that not correct?

A. Yes, sir, St. L. B. & M. to the N. O. T. & M.

Mr. McConaughy: We will accept it subject to check.

Mr. Brandwen: That is in evidence.

(Said paper was marked by the reporter as Comstock's Exhibit No. 44.) [See Vol. of Exs. p. 103.]

Q. (By Mr. Brandwen) Mr. Eckert, can you produce the June 30th, 1931 report of St. Louis, Brownsville & Mexico submitted to the Interstate Commerce Commission?

A. You mean the monthly report of revenue and expenses?

Q. The full amount that you have submitted to the Interstate Commerce Commission?

A. That is the fiscal year.

Q. Yes, I know, but the full report that you submit on June 30th, at the end of each month.

A. You mean the report of—monthly report of revenues and expenses?

Q. Yes. A. I will have to get that from Houston.

Q. Would you do that, please?

A. Yes, sir. What do you want, the St. L. B. & M. to the N. O. T. & M.?

Q. Yes, please. June 30th, 1931, and July 31st, 1931. Do you know how much cash on hand St. Louis, Brownsville & Mexico had at the beginning of June, 1931?

A. I do not, sir.

Q. Do you know how much cash it had on hand on June 30th, 1931? A. I don't have any figures on that.

Q. Those figures are available, are they not?

A. They are available. You want the cash on that?

Q. I want the amount of cash on hand and the current assets and current liability position of St. Louis, Brownsville & Mexico for the months of June and July, 1931.

Mr. McConaughy: I wonder, your Honor, if Mr. Brandwen wouldn't be good enough to all of us to present his request for future witnesses and the information he wants so we won't have this business of waiting and going all through this?

The Court: I thought before this hearing there was an agreement here with Mr. Biggs that they would take it up with counsel to produce things and you would notify them what they were.

Mr. McConaughy: That is what Senator Dearmont said yesterday.

Mr. Brandwen: If your Honor please, I didn't know how much information this witness had, I didn't know what reports he had. I thought under the circumstances that this witness would know how the three and a half million dollars was paid.

Mr. McConaughy: Why didn't you call him over and sit down and talk with him? Has he refused to talk to you?

Mr. Brandwen: I will tell you, if your Honor please, I want to say this, I am hesitant about talking to witnesses in this case in advance, I am very hesitant about that, be-

cause—I am not saying this with respect to Mr. Eckert, I want to make this perfectly clear, I am not satisfied as to how much of this information will be communicated to my opponent here, and I don't see how we can get protection on that. If, for example—

The Court: This is mostly all a matter of record.

Mr. McConaughy: Is there something secret about this, your Honor? I thought we were trying to get the facts.

Mr. Brandwen: We are trying to get the facts, I want to get the facts in such a way where all the facts will be put in the record, and I am not satisfied, if your Honor please, that that has—

The Court: It is a matter of records. I don't see how it would make any difference. The Missouri Pacific Railroad is not going to have these records falsified or anything of that sort. It is the same information for them as it is for you.

Mr. Brandwen: We tried to get that information when Mr. Delaney was in Houston, and he wasn't able to get it, they said it wasn't available, he tried to get it.

Mr. Kitchel: On the cash on hand?

Mr. Brandwen: On a number of items.

Mr. Kitchel: We are talking now about the cash on hand.

Mr. Brandwen: I don't know. Mr. Delaney is here and he can say whether he asked for the amount of cash on hand on June 30th, 1931, or not; I can't say.

Mr. Kitchel: You just said he couldn't get it.

Mr. Brandwen: I said he couldn't get a number of things he asked for.

Mr. Kitchel: What we were talking about was cash on hand on certain dates. The implication is there, you mentioned that.

Mr. Brandwen: I don't know whether he asked for it or not, but he asked for a number of things that he couldn't get.

Mr. Kirschbaum: I was going to say, it seems to me all this has been certified by the I. C. C., their accounting department has gone all over this, and apparently counsel is trying to upset the I. C. C. as well as all parties concerned. I notice counsel has taken four days of everybody's time to state what the issue was this morning, and wound up by indicating to the Court that he is on a fishing expedition. Now, I think it would be pertinent for your Honor to know, as was disclosed before the Interstate Commerce Commission and in this Court, that this gentleman represents a client of Mr. Comstock, who has thirty-nine shares of N. O. T. & M. stock purchased in 1942, and the Commission said in its report, purchased as a speculation. This man has considerable profit for the thirty-nine shares of N. O. T. & M. that he owns, and I think it is more than unfair to take up the time of all the counsel—I should say the Court first, the Court and of counsel, in trying this issue out and taking this long, protracted method of doing it.

Mr. Brandwen: If your Honor please, on the contrary, I think that if one examines the record here very carefully, one will find, one must necessarily conclude that the amount of evidence submitted with respect to the issues presented by this very large claim are both abundant and weighty, and when any counsel states that anything is protracted here in view of the size—

The Court: There is no question, whether it is stated by counsel or who, there is no question there has been a lot of the time of this Court taken up unnecessarily on matters that you have taken up with the witness on the stand here that you could have gotten the information just as well by asking him privately as you can by asking him in the presence of all the counsel here and the press and everyone else.

Mr. Brandwen: If your Honor please, I regard this as a very serious matter, and we are trying to get this done as quickly as we know how, and I think we are doing it, and it is a very serious matter, and we have made, in my opinion, I say this with all due respect, we have made real progress with respect to the presentation of the testi-

mony. An examination of the exhibits will disclose that beyond any question. I am doing everything I can to get the information as quickly as we can in advance. I cannot say that we can get all that completely in advance.

Mr. Kitchel: May I say a word, your Honor? Taking this document that he has just been questioning the witness in regard to, it showed on its face that at the end of 1932 a certain amount, I haven't my glasses, I think it is ten million odd, had not been paid. When he got through his examination that is all he has shown, and he took since quarter past two to bring that out.

Mr. Brandwen: I want to say this—

Mr. Kitchel: And it was all on the sheet when he started.

Mr. Brandwen: I want to say this, if your Honor please, say that this is one specific way in which Mr. Kitchel's comment can be nailed to the mast; so there won't be any question about that, I want to take this opportunity, with your Honor's permission, to have that nailed to the mast. You can search this document from now until doom's day, Comstock's Exhibit 43, for identification, and let anyone show me where there is in this document a statement showing that with respect to two dividends declared on June 17th, 1931, those two dividends that are unpaid go into family line bills, whereas, twenty days later another dividend was declared of three and a half million, of which one million presumably is paid, leaving two and a half million still unpaid, and that goes into quite another account. I think when it is learned as to why those different treatments were made in respect to a transaction or transactions that are comparable, I think it may be interesting to learn that. You can look at this document and you can't find that out, you can't find out from this document how much cash there was on hand at these dates, so when Mr. Kitchel says all that was done was about definite things that were in this document, I think he is completely mistaken.

Mr. Kitchel: In that particular I am mistaken.

Mr. Brandwen: You are.

Mr. Kitchel: But there was no reason why you had to go over item after item that had no bearing on the question you are now raising, when you could have brought that out in about two minutes without going through the whole document.

Mr. Brandwen: I want to have the record show, so that all who read may know that I asked what these other items were, and there is one answer made by this witness, I don't think it is important to make any comment on it, but which I hope to comment on at final argument that is very illuminating with respect to the way these matters were treated, which answer did not appear on this document, and Mr. Kitchel will be reminded in final argument as to what I have reference to, so when Mr. Kitchel says that all this is in this record, certainly certain figures are, but the significance of those figures and how they are related to these very basic issues, as to whether a subsidiary was so dominated by this Empire so that they did anything they wanted and as they wished, you have to show each one of these things so that the connection appears clearly.

Mr. Kitchel: Are we having the argument now, your Honor? It sounds like it.

Mr. Brandwen: I understand that you interrupted. I was examining a witness and you felt fit to come up with your statement, and certainly you admitted that you were wrong.

Mr. Kitchel: To the extent that I admitted.

Mr. Brandwen: To the extent that you admitted, a very important admission.

The Court: It is certainly very unfortunate that this wasn't done earlier instead of at this stage of the proceeding.

Mr. Brandwen: If your Honor please, I stated last July when this matter came up first that I thought time would be saved if we did it then. I made that as clear as I knew how in order to avoid this. I know under ordinary circumstances, I appreciate your Honor's position on that,

under ordinary circumstances a matter like this might have gone on, if you will, before a Special Master. I didn't suggest that because I didn't want to have anybody say there was any delay. I would like to point out, if your Honor please, that with respect to a matter, the Terminal Shares matter, that the Reconstruction Finance Corporation was interested in in the early days where they were having a very tough battle with respect to the Terminal Shares contract, that was a matter that involved inter-company dealings; it was a serious matter so far as dollars and cents were concerned, but I don't think any greater than this; that was before your Honor came into this case; but an examination of the amount of testimony taken, the length of time they spent, and I am sure that counsel for the Reconstruction Finance Corporation were very able, very competent, did their job very well, it took a good deal of time.

Mr. Homire: I would like to point out, your Honor, that that was done in the very early stages of this case, in the year 1935. I would like also to ask whether or not Mr. Brandwen will follow the very helpful suggestion that was made here by Mr. McConaughy that he announce in advance what information he wants these witnesses to produce so that we won't be one day with a long list of questions and maybe have to wait another week or two until the answers get here.

Mr. Brandwen: I will tell your Honor that I will do my utmost with respect to it, but I should like to point out that we haven't been engaged in the litigation of this matter even two full days on this, in the litigation of this particular claim, and I feel we made tremendous progress. We won't stress all the ramifications of this matter, and I told your Honor yesterday, and I repeat it, we are not going into any side issues, however they may bear on the principal issue. We feel that in order to achieve your Honor's desire on this matter, we are going to stick to the most basic issue and let the others fall by the wayside, however relevant they may be, but when you consider that we haven't been engaged in this even two full days—

The Court: If you can expedite the matter at all then

in any degree by [determinining] what witnesses you are calling and suggesting what documents you would like them to produce, please do so.

Mr. Brandwen: I will try to do so, surely. I have been doing that in a great many cases, with counsel for the Trustee, and he has been furnishing me with those documents. I must confess that I have been reluctant with respect to other witnesses. I am not saying that about Mr. Eckert. It must be apparent to your Honor here that one of the principal opponents whom we have in this matter is aided, certainly one can see quite obviously, by Mr. Wyer.

Mr. McConaughy: What is the inference to be drawn from that, please?

Mr. Brandwen: The inference to be drawn from that is as to how much dealing Mr. Wyer has been doing with employes of the trustee.

Mr. McConaughy: Mr. Wyer is not an employee or officer of the Trustee.

Mr. Brandwen: No, but I say how many dealings he has been having.

Mr. McConaughy: What are you doing now, just insinuating? Do you know anything about what you are talking about?

Mr. Brandwen: Yes, I think I do.

The Court: Proceed.

Q. (By Mr. Brandwen) Mr. Eckert, you stated before that by a journal entry on December 31, 1933, I think it is called Journal Entry No. 56, you transferred the unadjusted debits-family line bills of N. O. T. & M. as of December 31, 1933, to the investment account in the subdivision of advances; that is correct, is it not?

A. That is correct, sir.

Q. I want to ask you this question, Mr. Eckert. Did you ever prior to December 31, 1933, make a comparable transfer of other unadjusted debits-family line bills to advances in investment accounts?

A. I did not. I did this on instructions of the Commission.

Q. You did that on instructions of the Commission?

A. Of the Interstate Commerce Commission, yes, sir.

Q. And you had never done that before?

A. Not that I know of.

Q. Would you please refresh your recollection as fully as you can?

A. I don't think we ever had anything in 706.

Q. Well, since it will not be known what 706 is, you mean you never transferred prior to December 31, 1933, items from other unadjusted debits-family line bills to advances in the investment category, investments to affiliated companies? A. I don't recall that we did.

Q. And you said you did this pursuant to instructions from the Commission? A. Yes, sir.

Q. I show you this memorandum and ask you if that refreshes your recollection?

A. Yes, but that is all right. This is a letter getting Mr. Johnson's approval. He was the Chief Accounting officer at that time. There was an exception taken by the Interstate Commerce Commission to the 1932 audit.

Mr. Brandwen: I would like to offer this in evidence.

Mr. McConaughy: Does your Honor wish to read it first?

Mr. Brandwen: I am sorry. I offer this in evidence.

Mr. McConaughy: All right, your Honor.

(Said paper was marked by the reporter as Comstock's Exhibit 45.) [See Vol. of Exs. p. 105.]

Mr. Brandwen: I am not going to read this exhibit at the moment, I am going to inquire with respect to it.

Q. This letter was written or a memorandum was written by you, Mr. Eckert, from Houston, on January 18th, 1934, and from its contents it appears that it was written before you closed your December, 1933 account?

A. That is correct.

Q. Your Journal Entry No. 56 was one of the closing December, 1933, accounts, wasn't it? A. Yes, sir.

Q. So this was a suggestion that you were proposing to Mr. Johnson, who was the principal financial officer?
A. Chief Accounting Financial officer.

Mr. McConaughy: That has been testified to already.

Mr. Brandwen: Yes, I know it has. This is a letter written to him.

Q. Proposing a certain way of dealing with the family line bills and family lines vouchers that had accumulated up to December 31, 1933, isn't it? A. Yes, sir.
Q. That was your suggestion?
A. It came from the Interstate Commerce Commission. I don't mention it there, but the Interstate Commerce Commission checked our account and told us to do that.
Q. Did they tell you that by letter? A. Yes, sir.
Q. Will you produce that letter? A. I have it in here.
Q. Will you produce it?
A. An excerpt from it. It is about an inch thick, I think. If it is about an inch thick I don't want to produce the whole file. I will produce an extract of the letter dealing with that specific part of it, if that will do.

Mr. Brandwen: Now, you see, if your Honor please—may I just be pardoned for this comment—I had this before me, but in reading this I could never tell that this followed after any purported request from the Interstate Commerce Commission. It would never occur to me to ask the witness for this letter. One can read this as fully as one can and one would never suppose that. I simply want to cite this as an illustration of one of the problems that one is up against. I could not have gone over all this questioning with Mr. Eckert. I simply mention that as an illustration.

Q. Now, I call your attention to the fact, Mr. Eckert, that you say that, I am quoting, "I (that is Mr. Eckert) would like before closing December, 1933, account, to transfer such items, insofar as prior items are concerned, to advances and non-negotiable debit accounts in the same manner as we handled similar items some years ago." Do you recall I asked you before as to whether prior to the

journal entry of No. 56 as of December 31, 1933, you had ever transferred other unadjusted debits-family line bills to advances to affiliated companies in your investment account, and your answer was that you—

A. I said I didn't recall any.

Q. Well, now, does this memorandum, this letter of yours refresh your recollection?

A. I can't tell from that letter whether we had any items or not; it says prior items, and you are talking about 1933.

Q. Yes, but you say here, and I simply am reading your own language, you are suggesting to Mr. Johnson this transfer from other unadjusted debits-family line bills to another account in the investment account advances, and you say, you suggest that it be done, "In the same manner as we handled similar items some years ago." I am asking you whether this excerpt that I just read from in your letter to Mr. Johnson refreshes your recollection?

A. I may have transferred some; I said I didn't recall now. Lord, man, that is thirteen years ago.

Q. Mr. Eckert, I appreciate that, that is a fact that is an inescapable fact here, and if you don't recall, you just don't recall. I simply am asking whether this refreshes your recollection.

A. That letter indicates that we had some few others, I don't know what they were, but I know that the Interstate Commerce Commission was checking our accounts right along about once every year, I would say. That was an outgrowth of some exception that they had taken. Exception No. 19, I think it was, in the 1932 account, the 1932 account, and it was following along the very lines of that exception, which we assented to. Now, you didn't know about the Interstate Commerce exception, I don't imagine?

Q. No, I didn't.

A. That is an outgrowth of that exception.

Q. And you must admit from this letter—

A. Poorly worded I will say that.

Q. I make no comment on your wording, Mr. Eckert, I make no comment at all on it; I simply say I couldn't tell that from a reading from this letter.

A. That letter was submitted to St. Louis, and as you will see at the top, it was approved by Mr. Johnson; he did that in his own handwriting.

Q. That is his handwriting.

The Court: Announce a five minute recess.

(Five minute recess.)

MARTIN ECKERT,

a witness of lawful age, having been heretofore duly sworn, upon resuming the stand, further testified as follows:

Direct Examination (Continued).

Questions by Mr. Brandwen:

Mr. McConaughy: Your Honor, I was wondering—we didn't quite get the matter straightened out—Mr. Brandwen said the same thing he did yesterday. I was wondering if we can't get a direction from the Court to Mr. Brandwen not to call any more witnesses and then ask them to send to Houston for information and that sort of thing. Of course, if there is some reasonable excuse for not having asked for these [docuemtns] before—

The Court: To get a direction from the Court as to what?

Mr. McConaughy: Directing him that when he puts on a witness to give the witness advance notice of what he wants the witness to bring into Court. If he must have something that he doesn't know about, that is all right, I don't object to that, but there ought to be some reasonable effort made to give the witness advance notice as to what he wants.

The Court: You are asking the Court to give a specific direction as to that?

Mr. McConaughy: Yes, your Honor.

The Court: I don't know that any specific direction is necessary, but in order to expedite matters, Mr. Brandwen, give the witnesses as much advance notice as possible.

Mr. Brandwen: I am going to try to do that. That was one of the thoughts I hoped to be able to accomplish in connection with that subpoena, but we have heard a good deal about that, and I was perfectly willing—

The Court: Harping upon that theme again?

Mr. Brandwen: It is a difficult situation, and we are trying to do our very best with respect to it.

Q. Mr. Eckert, when it becomes necessary and desirable to make the miscellaneous adjustment in the accounts, the surplus accounts in the Profit and Loss accounts, in excess of five thousand dollars, isn't it customary for you as auditor to get instructions from others to make those adjustments?

A. What kind of adjustments do you refer to?

Q. Say, in profit and loss, or surplus accounts.

A. No, sir.

Q. You just go ahead and make them? A. Yes, sir.

Q. I ask you to look at this document and see whether you have seen the original of that before?

A. No, I haven't seen the original of this, but I imagine it is taken from page 323 of the NOTM report for the year 1924. Apparently, that is what the thing indicates.

Q. That is, it is contained in the report of the NOTM filed with the Interstate Commerce Commission for the year 1924, and you were the auditor of the NOTM during that year, as you testified? A. Yes, sir.

Q. And your signature appears in the original report, does it not? A. I guess it does.

Q. Now, I ask you to have this before you. I just handed to Mr. Eckert the copy of the report filed by the NOTM with the Interstate Commerce Commission as of December 31, 1924, which copy was furnished to me by Trustee's counsel. Would you like to look at it a little before I question you? A. Yes, I would like to look at it.

Q. Sure. All right, you look at that, and I will ask you about it. Now, in that report you submitted on behalf of the New Orleans, Texas and Mexico, to the Interstate Commerce Commission as of December 31, 1924, you have a group of miscellaneous credits which you added to

the Profit and Loss account for that year. Isn't that correct? A. Yes, sir.

Q. The first item is, although it is under miscellaneous credits, an item in red which deals with the reversal of errors, credit to profit and loss in previous years of $98,715.94. Is that correct? A. That is correct.

Q. The next item, which is under Miscellaneous Credits, and I am only reading from Miscellaneous Credits, is the difference between par value and cost of five per cent noncumulative income bonds reacquired and retired during the year of $109,686.00. Now, the next item here is one I would like to inquire about in particular, and that is stated on this report submitted to the Interstate Commerce Commission as interest payments received on first mortgage bonds of affiliated companies previously written off to profit and loss as follows: The St. Louis, Brownsville and Mexico Railway Company, July 1st, 1912, to May 31st, 1916,—I am reading, you understand, from a report filed by you with the Interstate Commerce Commission in 1924— A. Yes.

Q. —and the amount that you included in the credit for that was $2,548,916.40, and you have a similar item, that is, interest payments received on first mortgage bonds of affiliated companies previously written off to profit and loss as follows: the Beaumont, Sour Lake and Western, November 1st, 1912, to May 31st, 1916, $440,409.32. Would you explain each one of these two items, please?

A. I think I would have to refresh my memory on that. It is quite a long time ago and there were some bonds that were reacquired—no, cut that—there was some interest on these bonds that had previously been written off to profit and loss where the item was reversed, but I don't recall whether we ever had that up with the Interstate Commerce Commission or not.

Q. Do you know who instructed you to write up interest on first mortgage bonds for the period July 1st, 1912, to May 31st, 1916, that [——] been written off and all of a sudden in 1924, to add to surplus $2,548,916.40?

A. I don't recall that now at all; it is too long ago.

Q. Yes. There certainly must have been some instruction from someone on a matter of that magnitude, am I not correct in supposing that?

A. There probably was some correspondence about it, but there is no reference made to it here.

Q. We have a right to understand, haven't we, Mr. Eckert, that you didn't do that on your own, did you?

A. I said I didn't recall what brought it about, but I would have to get at the files on that and see what brought it about, if there was any correspondence on it.

Q. You will admit it is a very extraordinary action?

A. Well, it might appear to be, on account of the large amount involved.

Mr. McConaughy: If your Honor please, we object to that question.

Q. And also that it covered the period July 1st, 1912, to May 31st, 1916. The end of that period was eight years before this entry was made, some of it nine years before the entry was made.

Mr. McConaughy: Your Honor, he is just arguing with the witness. The witness says he doesn't recall. Doesn't that settle it?

Mr. Brandwen: I think, in view of the size of the transaction, if the witness can refresh his recollection, I would like to have him do so.

The Court: Proceed.

A. I would say, your Honor, I would have to get some more information on that. I don't recall the details of it. It is twenty-one years ago.

Q. That is, it was written up in 1924?

A. Yes, but the item apparently speaks for itself in that it indicates that it was—

The Court: Let's see it.

The Witness: Right there.

Q. Mr. Eckert, I regret that I don't recall, but when did you first come with the New Orleans, Texas and Mexico, did you say?

A. I came there in 1918 as Assistant Auditor; I first came to the properties in 1908 when it was still the CSNOP

Railroad, but I wasn't auditor all the time; I was chief clerk.

Q. Yes, but from your general contact with the property, you knew the St. Louis, Brownsville and Mexico Railway Company was in bankruptcy during the period July 1st, 1912, to May 31st, 1916? A. Yes.

Q. It was in bankruptcy during that period? A. Yes.

Q. So that this item which has been written up in the amount of $2,548,916.40 as interest on these first mortgage bonds, covered a period during which the St. Louis, Brownsville and Mexico was in bankruptcy?

A. Yes, they came out in 1916.

Q. They came out in 1916? A. Yes.

Mr. Kitchel: Receivership.

Mr. Brandwen: Well, Receivership, yes.

Q. Do you know when any interest on these first mortgage bonds, St. Louis, Brownsville and Mexico Railway Company, during the period of July 1st, 1912, to May 31st, 1916, was written off?

A. I told you I would have to examine the record on that. I can't answer.

Q. You don't know? A. No.

Q. And do you know whether the Beaumont, Sour Lake and Western, what its financial engagements or commitments with the others were during the period of November 1st, 1912, to May 31st, 1916?

A. The same answer I made for the StLB&M applies to that.

Q. It also was in equity receivership during that period? A. Yes, sir.

Q. And I suppose you want me to understand that you do not know at the present time when there was any write-off of any interest which accrued on the first mortgage bonds of the Beaumont, Sour Lake and Western while it was sojourning?

A. I was not the auditor of the NOTM or the BSL&W during that period, during that period of 1912 to 191[illegible], but Mr. McCullough was auditor at that time.

Q. But you do not know when it was written off?

A. No, I don't know when.

Q. I just want to get that clear. The sum total of these two items that were written up in December, 1924, annual report to the Interstate Commerce Commission amounted to over three million dollars, is that correct?

A. No, not over three million dollars; it is two million—

Q. Five hundred and forty-eight thousand?

A. $2,988,000.

Q. $2,988,000?

A. Nine hundred and eighty-nine, in round figures.

Q. Can you state whether when you became general auditor of the New Orleans, Texas and Mexico, whether you hadn't already found these items for interest that had accrued on these first mortgage bonds while these two companies were in receivership had been written off? Would your recollection enable you to answer that?

A. My recollection doesn't go that far back without referring to the records.

Q. Now, would you turn, please, Mr. Eckert, to the Surplus Account of New Orleans, Texas and Mexico, I think it is No. 300 in that same report filed by you with the Interstate Commerce Commission? A. 300? Yes, sir.

Q. Before we go into that, I understand that you are going to get that further information for me?

A. I will endeavor to get the information for you.

Q. Fine. Fine, and when you have it, will you please let me know so that you and I may discuss it? A. Yes, sir.

Q. Now, from an examination of that report of that particular category in the 1924 reports submitted to the Interstate Commerce Commission by New Orleans, Texas and Mexico, what do you find was the earned surplus of New Orleans, Texas and Mexico on January 1st, 1924?

A. $992,767.35.

Q. And the income for that year is reported as what?

A. $2,099,531.17.

Q. And you had miscellaneous other credits there that amount to less than two hundred thousand dollars, and I will not trouble you about them, and then you find another item called "Miscellaneous Credits," and that amounts to how much? A. $3,009,465.00.

Q. And isn't that the item concerning which you have just testified which appears on page 323 of that annual report?

A. I didn't testify about it, because I didn't know; I told you I had to get some further information on it.

Q. But that was the item concerning which the testimony addressed itself? A. Yes, sir, that is correct.

Q. And that was a report that you signed when you sent it to the Commission? A. Yes, sir.

Q. Now, I call your attention to the first charge against that surplus. What is that?

A. Dividend appropriations of surplus.

Q. No, before that. Is that what it is, dividend appropriation of surplus? A. Yes.

Q. How much? A. $3,485,379.00.

Q. That is to say that New Orleans, Texas and Mexico paid out in dividends during that year $3,485,379.00?

A. Yes, sir, that was the dividend appropriated.

Q. Yes, and that figure is almost $500,000 more than the earned surplus at the beginning of the year plus the income for the year 1924? A. Yes, sir.

Q. Now, I call your attention to the fact that—look at Item 300-D, dividend appropriations, and would you please state what you said with respect to that in the report which you submitted to the Interstate Commerce Commission? A. 300-D?

Q. Yes. A. Oh, yes.

Q. You answered that question, did you not?

A. Yes, sir.

Q. And what did you say in response to that question when you furnished your report to the Interstate Commerce Commission?

A. Regular stock dividend declared at the rate of seven per cent per annum, regular dividend shown on Schedule 300-D and figured on quarterly basis. No obligation has been incurred for the purpose of procuring funds for payment of dividends or for replenishing treasury of respondent after payment of dividends.

Q. And that was a correct statement, was it, Mr. Eckert? A. I think it was correct.

Q. You heard the testimony as to when the Missouri Pacific acquired the stock of the New Orleans, Texas and Mexico the other day? A. No, I didn't, I wasn't here.

Q. I should like to read from the minutes of a meeting of the Board of Directors of the New Orleans, Texas and

Mexico Railway Company held at 60 Broadway, New York, on Monday, May 19, 1924, at 2:00 P. M. Who was the president of the Company at the time, do you recall?

A. I don't recall.

Q. I think it is in the evidence and I would like—

A. I think Mr. J. S. Piatt was president prior to the time that the Missouri Pacific acquired the securities.

Q. Yes. Now, I will read this—it isn't long, but to deal with this point I would like to read this portion of the minutes, if your Honor please:

"The President advised that he has received an opinion from counsel to the effect that an extra distribution on the capital stock could lawfully be made and that the accumulated net profits of the New Orleans, Texas and Mexico Railway Company were sufficient to provide for such a distribution."

Do you know where that opinion is available?

A. No, I do not.

Q. Would you make an effort to find out, please?

A. I think the Secretary probably ought to get that for you.

Q. All right, the Secretary was—I think the Secretary was Mr. Warren. It looks like the signature of, I think, G. Warren. A. Yes.

Q. Yes, he is the same Mr. Warren who is a member of the New Orleans, Texas, and Mexico bondholders committee? A. Yes, sir, I think he was.

Q. (Reads) "Therefore, on motion duly made and seconded, it was resolved that an extra dividend in addition to the regular dividend of $16.50 per share be declared out of the accumulated net profits of this Company payable to stockholders of record as of May 26, 1924, as shown by the transfer books of the Company, said dividend to be payable as follows: $4.50 per share on June 2d, 1924. $6.00 per share on September 1st, 1924; $6.00 per share on December 1st, 1924.

"Further resolved that the assistant treasurer of the company be and hereby is authorized to arrange for the distribution of the additional cash distribution of $4.50 per share payable June 2d, 1924, and to execute and ar-

range for the distribution of dividend certificate of $6.00 per share in respect of the dividends payable September 1st, 1924, and December 1st, 1924, respectively, and that such certificate be executed on behalf of this Company by the assistant treasurer and registered by the Irving Bank Columbia Trust Company as registrar and be in such form as counsel may approve."

I now come to the minutes of a meeting of the Executive Committee of the Board of Directors of the New Orleans, Texas and Mexico Railway Company held at 39 Broadway, New York City, on Monday, August 11, 1924, at 2:30 P. M. There were present Messrs. G. H. Walker, who was Chairman of the New Orleans, Texas and Mexico Bondholders Committee in these proceedings, J. S. Piatt, Alex Burger, and G. Warren, and I would like to read these resolutions with your Honor's permission:

"The President of the Company reported that the estimated earnings of the Company for the quarter ending August 31st, 1924, would be substantially in excess of the rate of seven per cent per annum of the capital stock of the Company and stated that the Company's cash position would justify the disbursement of the customary quarterly dividend. On motion duly made and seconded it was resolved that a dividend of 1-¾% be paid of the outstanding stock of the Company for the quarter ending August 31st, 1924, payable September 1st, 1924, to stockholders of record as of August 22, 1924, and that the assistant treasurer of the Company be authorized to make the necessary arrangements for the payment and disbursement of the dividend."

Immediately thereafter in the minutes appear the following:

"The President stated that the Company might not have sufficient funds available to make the payment of the extra dividend of $6.00 payable September 1st, 1924, and advised that it might be necessary to obtain a temporary advance to meet this payment from one of the company's banks. On motion duly made and seconded it was resolved that G. H. Walker, Chairman of the Board, or J. S. Piatt, President of the Company, be authorized to procure

an advance, or advances from Irving Bank Columbia Trust Company of such sum or sums and upon such terms as he in his discretion deems necessary to provide sufficient funds to meet the Company's dividend requirements on September 1st, 1924, and that any such advances made by Irving Bank Columbia Trust Company be secured by a lien on the stock of the International Great Northern Railroad Company now held by said Bank."

I now come to the minutes of a meeting of the Board of Directors of the New Orleans, Texas and Mexico Railway Company held at 60 Broadway, New York City, on Thursday, November 6, 1924, at 12:30 P. M. and, parenthetically I may note that the officers of the New Orleans, Texas and Mexico Railway Company of New York were moving about.

Mr. Kirshbaum: Your Honor, may I note parenthetically that I object to the counsel reading this from only one point of view. It is in evidence, I think it should go in evidence and your Honor may read it without taking up the time of the Court; and if it is not in evidence, I object to it unless counsel proposes to ask a question based on it.

Mr. Brandwen: Yes, I have asked a question and I am going to ask some more questions.

The Court: Proceed.

Q. Again, Mr. J. H. Walker acts as Chairman, Mr. Warren was also present at the meeting, and so was Mr. Alex Burger, among others, and the minutes state:

"That the Chairman reported that the earnings of the Company for the quarter ending November 30, 1924, would be at a rate largely in excess of seven per cent per annum of the Company's stock and the Company's cash position justified the payment of the customary dividend. On motion duly made and seconded it was resolved that a dividend of 1-¾% be paid on the outstanding stock of the Company for the quarter ending November 30, 1924, payable December 1st, 1924, to stockholders of record as of November 20, 1924, and that the assistant treasurer be authorized to make the necessary arrangements for the

payment and distribution of this dividend. The Chairman advised that, although application had been made to the Interstate Commerce Commission for authority to issue and sell additional first mortgage bonds of the Company, to reimburse the Company's treasury in part for expenditures for Additions and Betterments, such application might not be acted upon in time to provide the treasurer of the Company with funds to meet its December 1st obligations, which obligations are about as follows: regular quarterly dividends, $260,000.00. Special dividends, $890,000.00, with the possible requirement of $600,000.00 to provide for the financing of the new equipment recently ordered and that therefore it might be necessary for the Company to borrow temporarily a sufficient sum to take care of the December 1st obligation, and, then, on motion duly made and seconded it was resolved that G. H. Walker, Chairman, or J. S. Piatt, President, be and are hereby authorized to obtain advances from the Irving Bank Columbia Trust Company or any other Bank and Trust Company in their discretion to a sum, or sums, not to exceed $1,200,000.00 in order to provide the Company with sufficient funds to meet its December 1st, 1924, requirements, securing such obligations by a loan application or note and a pledge of security for the payment of any advances so obtained of all the stock of the International Great Northern Railway Company held in the treasury of the Company."

Now, there is just one other item at the meeting of—

Mr. Kirshbaum: If your Honor please, may we have a question now?

Mr. Brandwen: I am just about through. This is the last one and then I am finished.

The Court: There have been plenty of them and you haven't asked a question yet.

Q. Minutes of a Special Meeting of the Board of Directors of the New Orleans, Texas, and Mexico Railway Company held in Room 1923, No. 120 Broadway, New York City, on Wednesday, January 7, 1925, at 12:00 o'clock.

Mr. Walker and Mr. Warren were also present, and the following appears in the minutes:

"The Chairman reported for the information of the Board that pursuant to the authority conferred by this Board at its meeting of November 26th, 1924, the Company borrowed from the Irving Bank Columbia Trust Company $850,000.00 to provide for December 1st requirements and $100,000.00 to provide for December 31st requirements, such advances being secured by a pledge of the stock of the International Great Northern Railway Company."

Now, Mr. Eckert, look at the report that you have filed with the Interstate Commerce Commission on behalf of New Orleans, Texas and Mexico for the year 1924, and see what dividends were paid by New Orleans, Texas and Mexico during that year?

A. Why, dividend appropriations were $3,485,379.00—I mean $3,385,379.00.

Q. And doesn't that report indicate the number of dividends that were made?

A. Yes, it shows three, six—seven.

Q. And would you please state what that shows?

A. What each one shows?

Q. Yes, so that we can show these are the dividends referred to in these minutes, or that the dividends referred to in these minutes are reflected in that report.

A. Well, in the first one on February 14, 1924, payable March 1st, 1924, of $259,549.50. The second one was declared on May 19, 1924, payable June 2d, 1924, $259,549.50. The third one, again on May 19th, 1924, payable on June 2d, 1924, $667,413.00. The fourth one was on May 19th, 1924, payable September 1st, 1924, in the amount of $889,884.00. The next one was on May 19th, 1924, again, payable December 1st, 1924, $889,884.00. The next one, August 11th, 1924, payable September 1st, 1924, $259,549.50. The next one on November 6th, 1924, payable December 1st, 1924, $259,549.50. Total, $3,485,379.00.

Q. Mr. Eckert, when you signed the report and you read the statement in the report filed with the Interstate Commerce Commission that "no obligation has been incurred for the purpose of providing funds for payment of dividends or for replenishing treasury by respondent, that

is, the NOTM, for the payment of dividends, "were you aware of the items that I have just read from the minutes?

Mr. McConaughy: I don't see how that is material, what Mr. Eckert was aware of.

Mr. Brandwen: I think it is very important, if your Honor please.

The Court: He may answer.

A. Well, I knew that there were several dividends declared, or to be declared, in connection with the sale of the NOTM stock, and I also knew there were some loans to be made, but that didn't have any direct bearing on the reply I made to the ICC report, because I got legal advice in making that notation.

Q. Oh, you did? Then you differed from the Chairman of the Board of Directors of the New Orleans, Texas and Mexico who stated in the minutes on November 6th, 1924, that—

Mr. McConaughy: You just read that previously.

Mr. Brandwen: Now, I am going to ask a question.

Q. (Continuing) —that it might be necessary for the Company to borrow temporarily a sufficient sum to take care of the December 1st obligations, which the Chairman immediately before this particularized as the regular quarterly dividend of $260,000.00 and a special dividend of $890,000.00?

A. Well, I don't know that I differed with him on that, because if they had enough financial backing to borrow money to pay dividends, I think they had a perfect right to do so in view of the fact we had a great many projects and additions and betterments for which we could issue bonds and that was also referred to in your reading of these minutes where we could have reimbursed ourselves by the issuance of bonds. That entered into the notation I made. Eventually, we would get that money back.

Q. You didn't make that statement that you just stated in the notation you made? A. No.

Q. You did not?

A. I did not. That is what I had in mind and that is

what our law department had in mind when they told me to show that.

Q. But that is not stated in this report? A. No, sir.

Q. And you also differed from the Chairman who reported at the meeting, the Chairman of the [Road], who reported at the meeting of the Board held on the 7th day of January, 1925, that he had borrowed, that the Company had borrowed from Irving Bank Columbia Trust Company $850,000.00?

Mr. McConaughy: It seems to me, your Honor, the facts are in the record. He is now asking for a construction of language.

The Court: He may answer the [queestion]. Complete your question.

Q. —to provide for December 1st requirements, which he stated at the November 6th meeting covered the regular quarterly dividends, the requirements covered the regular quarterly dividends of $260,000.00 and a special dividend of $890,000.00?

A. I don't think I ever differed with the Chairman of the Board of Directors, Mr. Counsel. I think the answer I made a little while ago will apply to this as well.

Q. Now, coming back to page 323 of your report of 1924 to the Interstate Commerce Commission, you state in this report that interest payments were received on these first mortgage bonds of St. Louis, Brownsville and Mexico, which had theretofore been written off to profit and loss for the period of July 1st, 1912, to May 31st, 1916, in the amount of $2,548,916.40. Did New Orleans, Texas and Mexico ever receive that sum of money?

A. I think I testified awhile ago that I was not prepared to answer that question until I made it—until I made a further study of the matter. That is also true of the item from the Beaumont, Sour Lake and Western.

Q. I see. There were letters written by the Commission with respect to the report of 1924 that a—report filed by you on behalf of New Orleans, Texas and Mexico with the Interstate Commerce Commission bearing on the report. I have tried to get those letters but I haven't been able to see them yet. Would you obtain them, please?

A. I will endeavor to get them.

Q. And will you let me have a chance to look at them beforehand? A. Yes, sir, anything you want, Counsel.

The Court: Might save time if Court would adjourn at this time and take up the matters you want to ask about. Court will stand adjourned until tomorrow morning at ten o'clock.

Met, pursuant to adjournment as above, on January 12, 1945, at ten o'clock A. M.

After a brief recess, the hearing was resumed as follows:

Mr. Brandwen: If Your Honor please, may I point out that Mr. Delaney was requested to furnish counsel with detailed figures used in summarizing profit and loss in his testimony, and Mr. Delaney has just furnished counsel with that summary.

There is just one formal thing for the record, if Your Honor please. While we have not made any very careful attempt to check the record, there was one obvious misprint in the record, that has also been discussed with counsel.

Let the record show that all the exhibits which we have offered, except for Exhibits 1 and 43, which were marked for identification, all other exhibits than Exhibits 1 and 43 were offered in evidence. The record is ambiguous in certain parts on that point, but Exhibits 2 to 45, inclusive, with the exception of Exhibits 1 and 43, are in evidence.

Direct Examination of Mr. Martin Eckert
Resumed by Mr. Brandwen:

Q. Mr. Eckert, I show you this copy and ask you to state what that is.

A. It is a statement showing, for the St. Louis, Brownsville and Mexico Railway Company, a schedule of dividends declared and reported paid during the period January 1, 1924, to December 31, 1932, shown in the annual reports to the Interstate Commerce Commission, Schedule 300-D.

Mr. Brandwen: I offer this in evidence.

Mr. McConaughy: Will you ask the witness to state who prepared it?

Mr. Brandwen: Yes.

The Witness: This was prepared by Mr. Delaney.

Mr. Brandwen: And shown to Mr. Eckert before he came to Court this morning, and, of course, it is subject to check. In order to eliminate the necessity of questioning him in respect of each one of these items—

Mr. McConaughy: Subject to check.

(The document last offered in evidence was marked Comstock Exhibit 46.) [See Vol. of Exs. p. 106.]

Mr. Brandwen: Would Your Honor care to see it (handing exhibit to the Court)?

Mr. McConaughy: Your Honor, I would like to say this: That, since that was prepared by Mr. Delaney, I would like to reserve the right to cross-examine Mr. Delaney about it.

The Court: Very well.

Mr. Brandwen: Q. Am I correct, Mr. Eckert, in stating that of the total of dividends reported as paid by St. Louis, Brownsville and Mexico, as appears in this Exhibit 46, to New Orleans—

Mr. McConaughy: I don't think he has qualified the witness to answer this yet. He doesn't state whether the witness examined this statement and checked it. He is asking a question as to an amount, out of his head.

Mr. Brandwen: I thought I made it clear that this statement was shown to Mr. Eckert before Court.

Mr. McConaughy: You are not testifying.

The Court: Admitted, subject to the objection.

Mr. Brandwen: Q. Have you examined this Exhibit 46?

A. I didn't check it; I just looked at it a little while ago. That is all I did to it. I would like to check it myself against the annual reports and other reports.

Q. This schedule just purports to be extracts from the Annual Report submitted to the Interstate Commerce Commission? A. Yes.

Q. Mr. Eckert, you were asked yesterday when you were on the stand, to see about getting some material concerning which you testified, and you are still engaged in the process of attempting to get that material, are you not?

A. Yes, sir. There will be some little delay, because I have to get it from Houston, Texas.

Q. They relate to the New Orleans, Texas & Mexico?

A. Yes.

Q. And some of the subsidiaries. As soon as you get that will you let us know promptly? A. Yes.

Q. Yesterday you testified to family line bills of the New Orleans, Texas & Mexico and you were asked to produce whatever comments or communications were made by the Interstate Commerce Commission with respect thereto?

A. That is correct.

Q. Pursuant to that request you handed me this morning some excerpts from Interstate Commerce Commission communications, did you? A. Yes, sir.

Q. And the first one that you handed to me was this document here, which is an extract from a larger document which I have not yet seen (handing document to the witness)?

A. Exception No. 19 of the 1932 audit, examination of Interstate Commerce Commission, which, however, does not mean that it confined itself only to the year 1932, because the final answer by us was not made until sometime in 1934.

Q. But this was sent to you with respect to the 1932 report filed by New Orleans, Texas & Mexico with the Interstate Commerce Commission?

A. That is correct, sir.

Q. And the communication sent by the Interstate Commerce Commission is a much larger document?

A. Very much larger. There is quite a file of it.

Q. And this is what you excerpted for me and handed me this morning?

A. Yes, sir. I am testifying that that is a correct copy of what is in that Exception.

Q. And this is a complete copy of what appears in Exception No. 19? A. Yes.

Mr. Brandwen: I offer this in evidence.

(The document last indicated was marked Comstock Exhibit 47.) [See Vol. of Exs. p. 107.]

The Witness: Counsel, I only have one other copy of that.

Q. Can you get more copies made? A. I can.

Q. Will you please do so? Mr. Eckert, is there any significance of these items that appear in the upper right-hand corner?

A. That is the file reference of the Interstate Commerce Commission.

Q. You also handed me this document this morning, did you not (indicating)? A. Yes, sir.

Mr. Brandwen: I offer this in evidence.

(The document last offered in evidence was marked Comstock Exhibit 48.) [See Vol. of Exs. p. 108.]

Q. Exhibit 48, which has just been marked in evidence, states it is an extract from a letter—

Mr. McConaughy: I can't hear you.

Mr. Brandwen: Exhibit 48, which has just been marked in evidence, purports to be an extract from a letter dated February 12, 1934, addressed to Mr. Louis F. Ormond, Examiner of Bureau of Accounts, Interstate Commerce Commission, Houston, Texas. This was written by whom?

A. Written by myself.

Q. We have not had a chance to see the entire letter, but this is the note that you excerpted, thinking it was pertinent to the testimony you gave yesterday?

A. Yes; that is a correct extract of it.

Mr. Brandwen: I will show you this in a moment, Your Honor, because I should have identified the next one first, to be more complete.

Q. I now show you another document, which you handed me this morning, and I ask you to look at that. A. Yes.

Q. What does that purport to be?

A. That is Exception No. 11, taken by Examiners of the Interstate Commerce Commission to our accounting as of December 31, 1932, under the Interstate Commerce Commission File D-C 9032, St. Louis, B. & M. Railway Company.

Q. Yes, this is an exception taken with respect to the accounting of St. Louis, Brownsville and Mexico, as reported in your Annual Report of the St. Louis, Brownsville and Mexico to the Interstate Commerce Commission for the year 1932? A. Yes, sir.

Q. Whereas, Exhibit No. 47 dealt with New Orleans, Texas & Mexico; is that correct? A. That is correct.

Mr. Brandwen: I offer this in evidence.

(The document last offered in evidence was marked Comstock Exhibit 49.) [See Vol. of Exs. p. 110.]

Q. So that the record may be completely clear, I am now referring to Comstock Exhibit 47, which is described in Exception No. 19. I want to ask you one question with respect to the paragraph designated as (a). When the Examiner, in his Exception, refers to "An account styled 'family line bills' classified under Account 727 'other unadjusted debits' ", he is referring to charges and bills due from various subsidiaries of New Orleans, Texas & Mexico to New Orleans, Texas & Mexico; that is correct?

A. Yes, that is correct.

Q. And when, in paragraph (b) the Examiner refers to "An account styled 'family line vouchers' classified under Account 778 'other unadjusted credits', which account reflected a balance of $78,394.45 as of December 31, 1932", he was referring, was he not, to amounts in this account that were due and owing from New Orleans, Texas & Mexico: That is correct, is it not? A. Yes.

Q. Coming to Exhibit 49, dealing with paragraph (a) in Exception No. 11 then, where the Examiner refers to the—

Mr. McConaughy: I think it is improper to ask this witness what the Examiner of the Interstate Commerce Commission meant in a communication to the company. The letter speaks for itself.

Mr. Brandwen: I am trying to get this clear. The witness already testified that he responded to this Exception and assented to it, and I can certainly ask him as to what he understood was meant, because he acted thereon.

Mr. McConaughy: He is asking the witness to construe somebody's letter.

The Court: He may do so.

Mr. Brandwen: (Continuing question) —refers to "an account styled 'family line bills' classified under Account 727 'other unadjusted debits'", showing a balance of $410,674.21.

Mr. Eckert, that refers, does it not, to bills and vouchers due and owing St. Louis, Brownsville and Mexico from other companies?

A. Bills rendered against affiliated companies by the St. L. B. & M.

Q. The St. Louis, Brownsville and Mexico was a creditor? A. That is right.

Q. When you come down to item (b), still dealing with Comstock Exhibit 49, reference is made by the Examiner to "An account styled 'family line vouchers' classified under Account 778 'other unadjusted credits', which account reflected a balance of $10,598,654.54 as of December 31, 1932". That refers, does it not, to the amount due and owing from St. Louis, Brownsville and Mexico to New Orleans, Texas & Mexico? A. That is correct, sir.

Q. Mr. Eckert, it was your practice, was it not, to prepare earnings reports from time to time of New Orleans, Texas & Mexico and its various subsidiaries, prior to directors' meetings of those companies?

A. Not for the subsidiaries companies. We prepared it for the New Orleans, Texas & Mexico proper.

Q. For the New Orleans, Texas & Mexico itself? A. Yes.

Q. You gave those reports to the directors of New Orleans, Texas & Mexico?

A. No; I gave the reports to the Executive Assistant, Mr. Safford.

Q. I show you this letter, Mr. Eckert, and ask you whether you have ever seen this or a copy thereof before.

A. Yes, I think I saw this letter before.

Q. Who signed that letter, do you know? The copy I have doesn't indicate.

A. Well, I think I signed the letter. I would like to check it, though, to see whether it is correct. I state under oath I did sign that. I think the letter is all right, it sounds very much like—

Q. Like yours. There is an item on here that you won't care about, so I am not going to offer this particular one, because it states where it is found. May I then ask you if that is not a copy of the letter that you just saw (indicating document)? A. Yes.

Mr. Brandwen: I offer this in evidence.

Mr. McConaughy: May I ask the witness a question, Your Honor?

Q. Was that prepared by you, or under your direction, Mr. Eckert, this document that has been offered in evidence and that you have just looked at?

The Witness: You mean the letter itself?

Mr. McConaughy: Was that document?

The Witness: No, sir; it was not.

Mr. McConaughy: I agree to its going in evidence, subject to our check of it.

Mr. Brandwen: That is always understood, Mr. McConaughy.

The Court: That has been understood.

Mr. McConaughy: As I understand it, you are offering this with the exception of the notation at the foot, consisting of three lines?

Mr. Brandwen: No. I am offering that as is.

(The document last offered in evidence was marked Comstock Exhibit 50.) [See Vol. of Exs. p. 111.]

Mr. Brandwen: Q. I now show you this document and ask you whether you have seen this or a copy thereof before.

A. I have to take it subject to check. I recognize the letter; it is signed by Mr. Banks.

Q. And Mr. Banks' position was what?

A. My assistant.

Q. And he is Assistant Auditor of the New Orleans, Texas & Mexico? A. Assistant Auditor, now.

Q. (By Mr. Brandwen) You did not physically prepare the copy which I have just offered in evidence?

A. No, sir, I did not.

Q. I assume that if you find any inaccuracies in that document, you will let us know about it? A. I will, sir.

(The Exhibit last offered in evidence was marked Comstock Exhibit No. 51.) [See Vol. of Exs. p. 112.]

Q. Mr. Eckert, do you know anything at all about the purchase by the New Orleans, Texas & Mexico of International-Great Northern adjustment bonds in 1927?

A. No, I think I know they were purchased; I don't know much about it, and I could not give any detail about it.

Q. You don't know anything at all about when the arrangements for the purchase were made? A. I don't, sir.

Q. Then I will not examine you about that.

Mr. Brandwen: That is all I have with Mr. Eckert at the present time.

Mr. McConaughy: I would like to defer cross examination, your Honor.

The Court: May Mr. Eckert be excused?

Mr. Brandwen: Yes.

Mr. McConaughy: I may wish to recall him for cross examination.

Mr. Brandwen: I would like to call Mr. Cole to the stand now. I have indicated to counsel for the Trustee that I was going to ask for Mr. Cole to be called.

Mr. Dearmont: Counsel asked me if I could produce Mr. Cole, and I thought I could, and I called his office and find he is going by the doctor's office this morning and we expect him back at his office in just a few minutes. I have also asked Mr. Wagner; Mr. Cole is not here right now, but I think will be in a half hour.

Mr. Brandwen: And Mr. Baldwin will be available? I would like to call Mr. Baldwin. I would like Mr. Cole first if I could. I want to have Mr. Cole for a few questions before I get Mr. Baldwin.

Mr. Dearmont: Mr. Cole is not here. I think he can be here in the next half hour. I have called his office and will call again.

The Court: We will recess, and call me as soon as the witness arrives.

(Thereupon a recess was taken until 11:53 a. m., at which time court reconvened, and the following proceedings were had:)

AMOS T. COLE,

a witness of lawful age, being duly produced, sworn and examined, testified on behalf of Andrew W. Comstock, as follows:

Direct Examination

By Mr. Brandwen:

Q. Give the reporter your full name and address, please.

A. Amos T. Cole; residence, Hotel Kingsway, St. Louis.

Q. What is your present occupation, Mr. Cole?

A. I am secretary for the Trustee of the Missouri Pacific Railroad Company.

Q. And have you been connected with the Missouri Pacific Railroad Company in any capacity for a number of years? A. Yes.

Q. Would you please state for the record just what your connection has been with the Missouri Pacific Railroad or any of the other railroads that the Missouri Pacific had any interest in?

A. I started with the railroad, that is now a part of the Missouri Pacific property in 1907, as clerk, and then paymaster at Beaumont and Houston, in 1911, and was later made secretary and treasurer of what is known as the Gulf Coast Lines; that is, the N. O. T. M., and subsidiary companies.

Q. You became secretary and treasurer when, do you recall?

A. 1918, I took over the duties, and I think I got the title a year or two later. At first I was just acting. In 1932 I was moved to St. Louis as assistant secretary of the Missouri Pacific, and the lines here.

Q. And prior to 1932 were you acting as secretary and treasurer of the New Orleans, Texas & Mexico and its various subsidiaries with your headquarters in—

A. Houston.

Q. Then we understand that you were secretary and treasurer of the St. Louis, Brownsville & Mexico during the period 1918 to 1932? A. Yes, sir.

Q. And Beaumont, [Saur] Lake and the other companies?

A. I did not always have the title of secretary. I think Mr. Warren in New York was secretary and I had the title of assistant secretary of the N. O. T. & M., and I believe of the subsidiary companies, I was secretary and treasurer at that time.

Q. Now, Mr. Cole, I show you copy of minutes that were produced the other day by Trustee's counsel, and ask you whether you have the original here of the minutes, June 17, 1931, of the St. Louis, Brownsville & Mexico Company?

A. No, sir; the originals are not here.

Q. Do you know where they are?

A. They are in Houston.

Q. They have been requested from Houston and do you know what arrangements have been made for getting them? A. No, sir, I do not.

Q. Mr. Cole, these minutes that have been furnished us, copies of which have been furnished us, are not complete in every respect, are they? Will you look at them, please?

A. Well, I don't know. I would have to check them with the original to answer that.

Q. Would you just look at them and look at the first page, for example, and see if you can tell from them that they are not complete; that is, the exhibits are not there?

A. They seem to be complete as far as the transactions at the meeting are concerned, but the waivers that are spoken of are attached to the original copies in Texas.

Q. You do not have copies of them here?

A. I do not have copies, no; they would not be here.

Q. These copies indicate that the originals were signed by you as secretary? A. Yes.

Q. And you were present at the meeting? A. Of course.

Q. And these gentlemen who are named as being present as directors were present, also? A. That is right.

Q. I have asked counsel for the Trustee to see whether he could get the original with the original waivers.

Mr. Dearmont: I thought I had complied when I gave him a copy.

Mr. Brandwen: I asked you the other day in court whether we could not get the original, because these don't have—

Mr. McConaughy: What is the materiality of the waivers? We don't object to the validity of the meetings or the minutes, are you objecting to them?

Mr. Brandwen: No, I am not objecting to them.

Mr. McConaughy: Then what is the importance of it; do we have to send for stuff from Houston just because of some waivers?

Mr. Brandwen: I just want to know when the waivers were signed. I just want to know what notice there was.

Mr. McConaughy: What materiality is that? We concede the meetings were validly held.

Mr. Brandwen: I want them; if they can be produced they can be produced.

Mr. Dearmont: They can be produced, but I really didn't understand that you wanted—I thought this served your purpose, but if it does not, I will ask to get the original copies here.

Mr. McConaughy: I feel that if all we are going to get is some waivers, or copies, there is no materiality in that.

Mr. Brandwen: If your Honor please, the reason I want them is, we are dealing here with two meetings; one, on June 17, 1931, and one on July 11, 1931. These two meetings held within twenty days of each other, and at the

Q. And Mr. Banks' position was what?

A. My assistant.

Q. And he is Assistant Auditor of the New Orleans, Texas & Mexico? A. Assistant Auditor, now.

Q. (By Mr. Brandwen) You did not physically prepare the copy which I have just offered in evidence?

A. No, sir, I did not.

Q. I assume that if you find any inaccuracies in that document, you will let us know about it? A. I will, sir.

(The Exhibit last offered in evidence was marked Comstock Exhibit No. 51.) [See Vol. of Exs. p. 112.]

Q. Mr. Eckert, do you know anything at all about the purchase by the New Orleans, Texas & Mexico of International-Great Northern adjustment bonds in 1927?

A. No, I think I know they were purchased; I don't know much about it, and I could not give any detail about it.

Q. You don't know anything at all about when the arrangements for the purchase were made? A. I don't, sir.

Q. Then I will not examine you about that.

Mr. Brandwen: That is all I have with Mr. Eckert at the present time.

Mr. McConaughy: I would like to defer cross examination, your Honor.

The Court: May Mr. Eckert be excused?

Mr. Brandwen: Yes.

Mr. McConaughy: I may wish to recall him for cross examination.

Mr. Brandwen: I would like to call Mr. Cole to the stand now. I have indicated to counsel for the Trustee that I was going to ask for Mr. Cole to be called.

Mr. Dearmont: Counsel asked me if I could produce Mr. Cole, and I thought I could, and I called his office and find he is going by the doctor's office this morning and we expect him back at his office in just a few minutes. I have also asked Mr. Wagner; Mr. Cole is not here right now, but I think will be in a half hour.

Mr. Brandwen: And Mr. Baldwin will be available? I would like to call Mr. Baldwin. I would like Mr. Cole first if I could. I want to have Mr. Cole for a few questions before I get Mr. Baldwin.

Mr. Dearmont: Mr. Cole is not here. I think he can be here in the next half hour. I have called his office and will call again.

The Court: We will recess, and call me as soon as the witness arrives.

(Thereupon a recess was taken until 11:53 a. m., at which time court reconvened, and the following proceedings were had:)

AMOS T. COLE,

a witness of lawful age, being duly produced, sworn and examined, testified on behalf of Andrew W. Comstock, as follows:

Direct Examination

By Mr. Brandwen:

Q. Give the reporter your full name and address, please.

A. Amos T. Cole; residence, Hotel Kingsway, St. Louis.

Q. What is your present occupation, Mr. Cole?

A. I am secretary for the Trustee of the Missouri Pacific Railroad Company.

Q. And have you been connected with the Missouri Pacific Railroad Company in any capacity for a number of years? A. Yes.

Q. Would you please state for the record just what your connection has been with the Missouri Pacific Railroad or any of the other railroads that the Missouri Pacific had any interest in?

A. I started with the railroad, that is now a part of the Missouri Pacific property in 1907, as clerk, and then paymaster at Beaumont and Houston, in 1911, and was later made secretary and treasurer of what is known as the Gulf Coast Lines; that is, the N. O. T. M., and subsidiary companies.

Q. You became secretary and treasurer when, do you recall?

A. 1918, I took over the duties, and I think I got the title a year or two later. At first I was just acting. In 1932 I was moved to St. Louis as assistant secretary of the Missouri Pacific, and the lines here.

Q. And prior to 1932 were you acting as secretary and treasurer of the New Orleans, Texas & Mexico and its various subsidiaries with your headquarters in—

A. Houston.

Q. Then we understand that you were secretary and treasurer of the St. Louis, Brownsville & Mexico during the period 1918 to 1932? A. Yes, sir.

Q. And Beaumont, [Saur] Lake and the other companies?

A. I did not always have the title of secretary. I think Mr. Warren in New York was secretary and I had the title of assistant secretary of the N. O. T. & M., and I believe of the subsidiary companies, I was secretary and treasurer at that time.

Q. Now, Mr. Cole, I show you copy of minutes that were produced the other day by Trustee's counsel, and ask you whether you have the original here of the minutes, June 17, 1931, of the St. Louis, Brownsville & Mexico Company?

A. No, sir; the originals are not here.

Q. Do you know where they are?

A. They are in Houston.

Q. They have been requested from Houston and do you know what arrangements have been made for getting them? A. No, sir, I do not.

Q. Mr. Cole, these minutes that have been furnished us, copies of which have been furnished us, are not complete in every respect, are they? Will you look at them, please?

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Q. Would you just look at them and look at the first page, for example, and see if you can tell from them that they are not complete; that is, the exhibits are not there?

A. They seem to be complete as far as the transactions at the meeting are concerned, but the waivers that are spoken of are attached to the original copies in Texas.

Q. You do not have copies of them here?

A. I do not have copies, no; they would not be here.

Q. These copies indicate that the originals were signed by you as secretary? A. Yes.

Q. And you were present at the meeting? A. Of course.

Q. And these gentlemen who are named as being present as directors were present, also? A. That is right.

Q. I have asked counsel for the Trustee to see whether he could get the original with the original waivers.

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Mr. McConaughy: I feel that if all we are going to get is some waivers, or copies, there is no materiality in that.

Mr. Brandwen: If your Honor please, the reason I want them is, we are dealing here with two meetings; one, on June 17, 1931, and one on July 11, 1931. These two meetings held within twenty days of each other, and at the

first meeting there were dividends declared amounting to $655,000.00 odd; and at the second meeting there was a dividend declared that involved $3,500,000; that is a total of over $4,100,000, in dividends—

The Court: The Trustee said he will try to get them.

Mr. Brandwen: Yes, sir.

Mr. Dearmont: If there are any other original minutes that we don't have, and you want that are in Texas, I think you better tell me about it all at once.

Mr. Brandwen: I will try to do that. That is why I gave you a list of items earlier—it has nothing to do with these, but I have been trying to do that.

Mr. Dearmont: You are just asking me now if there is something I could have sent for.

Mr. Brandwen: Yes, there are certain other things that I expect to find that we are trying to get.

Mr. Dearmont: This morning?

Mr. Brandwen: And some of those that I discussed the other day that are on that list.

Mr. Dearmont: Tax returns?

Mr. Brandwen: (Q.) Now, Mr. Cole, from an examination of each meeting, July 11th, you find that the original waiver is not present there either, or on July 11, 1931?

A. No, the original waiver is not attached to this copy of the minutes.

Mr. Brandwen: May the record show that the minutes of July 11, 1931, since they are all in evidence that Mr. Andrews, who was a director of the road was not present.

A. I don't understand your question.

Q. I just wanted the record to show that, isn't that correct? Mr. Andrews was not present at the meeting on July 11, 1931? A. No, he was not.

The Court: The original is not there; that is a copy?

Mr. Brandwen: Not the waiver.

The Court: The original of the waiver was not there; you meant there was a copy there.

The Witness: No, sir, there is no copy. Mr. Andrews was not present at that meeting.

Mr. Brandwen: (Q.) He was present at the earlier meeting on June 17th? A. Yes.

Q. Now, Mr. Cole, it was your practice, was it not, to prepare resolutions in advance of director meetings?

A. Sometimes we did; not always.

Q. When you say "we", you mean you?

A. Well, on instructions from—sometimes the legal department furnished the wording of the resolution.

Q. And when the matter of the declaration of the dividend by the St. Louis, Brownsville & Mexico was to be considered, you were told about that in advance, were you? A. I don't know.

Q. I show you Exhibit 50, that was offered in evidence this morning and ask you whether an examination of this will refresh your recollection as to the procedure?

A. Your question again, please?

Q. Does this refresh your recollection as to the practice you observed prior to the holding of meetings, when those meetings were to consider the declaration of dividends? A. No.

Q. It does not? A. No.

Q. Did you, when you received this letter of March 27th, Exhibit 50, did you have a "suitable resolution" prepared for the next meeting of the board of directors of the St. Louis, Brownsville & Mexico? A. I don't know.

Mr. McConaughy: What year are you talking about?

A. It is hard to remember if I prepared the resolution or the attorneys prepared it, or who prepared it; of course, if the letter was there it was prepared.

Mr. McConaughy: May the record show what year you are talking about?

Mr. Brandwen: March 27, 1926.

Q. Now, I show you a letter of July 2, 1926, and ask you whether you recall having seen that, or a copy thereof?

A. Do you want to know if I have seen this before?

Q. Yes.

A. I don't recall. That is 1926, and that is eighteen years ago.

Q. You don't recall? A. No, sir, I don't recall.

Q. Do you have any files of letters that are addressed to you in regard to St. Louis, Brownsville & Mexico, in St. Louis?

A. No, not in St. Louis; that would be in Houston.

Q. And as this letter is shown to you, does this refresh your recollection in any way as to whether you received it? A. No.

Mr. McConaughy: You just asked that question.

Mr. Brandwen: It doesn't? A. No; I could not recall.

Q. You have means of checking whether you received such a letter?

A. I would have to check with the office in Houston to see if it is in the file.

Mr. McConaughy: What was that?

A. I would have to check with the office in Houston to see if it is in the file.

Mr. Brandwen: May I offer this in evidence subject to the examination by Mr. Cole?

(The last Exhibit referred to was marked Comstock Exhibit No. 52.) [See Vol. of Exs. p. 113.]

Mr. Brandwen: Mr. Cole, I refer you to the minutes of June 17, 1931, of the St. Louis, Brownsville & Mexico, and call your attention to the resolution on the bottom of page 43 and ask you to examine that for a moment—(Handing witness paper)

You have examined it? A. Yes.

Q. And you will notice, Mr. Cole, that this resolution provides for the declaration of a dividend of $316,188.85. Do you have any information now, or any recollection now as to how that amount was arrived at? A. No, sir.

Q. You know nothing at all about it? A. No, sir.

Q. Were you given any records, reports, or memoranda, indicating why the figure of $316,188.85, was the figure fixed for the dividend? A. I don't recall.

Q. Now, I call your attention, Mr. Cole, to the resolution on page 44 of the minutes of the June 17th meeting, and ask you to examine that resolution for a moment.

A. I have read the resolution.

Q. And I will ask you with respect to this resolution on page 44 of the minutes of the board of the St. Louis, Brownsville & Mexico, held on June 17, 1931, which resolution immediately follows upon the resolution concerning which you have just testified, and that resolution provides for the declaration of a dividend by the St. Louis, Brownsville & Mexico, on its stock, in the amount of $338,890.88; do you recall whether any memoranda, document, or explanation was given to you as to why this dividend was fixed at this amount? A. No.

Q. You can't therefore, state to the court why those dividends were fixed at these respective amounts?

A. No, sir, I can't.

Q. Do you know, Mr. Cole, why there were two dividends declared at the same meeting? A. No.

Q. There was no memoranda that you have that would throw light on the matter?

A. No, I have no information on that at all.

Q. Examining the minutes of June 17, 1931, Mr. Cole, can you state whether there was submitted to the board of directors of St. Louis, Brownsville & Mexico, June 17, 1931, any reports bearing on earnings, income, profit and loss, balance sheets, or anything else, relating to the financial position of the company on which the board of directors might have acted? A. No, sir, I don't recall.

Q. Well, examine the minutes, won't you please, and see whether there is anything in those minutes which would indicate that any report was submitted to the board of directors of the meeting on June 17, 1931, bearing on that point? (Handing witness paper)

A. I don't recall that there were any statements delivered to me in connection with the resolution we adopted of this amount in connection with dividends.

Q. When you say any statements, will you please elaborate on that a little further; statement is a general term; describe what you mean by statements?

A. As I understand your question to be whether presented at the meeting or delivered to me any instrument in

connection with those two resolutions; there were no statements at all.

Q. The minutes don't show that there was submitted to the board of directors here at [his] meeting of June 17, 1931, any operating statements, income statements, profit and loss statements of any kind, or financial statements that the board might consider before it passed these resolutions declaring the dividends; am I stating correctly what the minutes refer to?

A. There was nothing submitted that should have been included in the minutes. Now, whether there were statements of the kind you mentioned submitted to the members of the board of directors at the meeting or before the meeting, I don't know. I don't recall that. Maybe I would not have knowledge of it.

Q. What is that?

A. Maybe it was submitted before the meeting, and maybe I would not have knowledge of it.

Q. And these minutes that we have here of June 17, 1931, are true copies of what took place? A. Yes, sir.

Q. At the meeting? A. That is correct.

Q. On June 17, 1931? A. Yes, sir.

Q. Now, I ask you to look at the minutes of a special meeting of the board of directors of St. Louis, Brownsville & Mexico, held at Houston on July 11, 1931, and ask you whether from an examination of the minutes, or from your recollection, you can state whether the board had before it any financial data when it considered the declaration of this dividend of $3,500,000.00?

A. There was no financial data submitted that should be made a part of the secretary's records.

Q. Do you know whether there was any financial data submitted? A. No.

Q. You don't know? A. No, I don't recall.

Q. So since you don't recall that you can't say whether it should or should not have been made a part of the secretary's records?

A. Well, if it was submitted and should have been made a part of the secretary's records, I think it would have been noted in the minutes.

Q. But you can't say whether it was,—whether such financial data was submitted?

A. No, I can't say whether it was or was not submitted.

Q. And the same answer applies with respect to the meeting of the directors held on June 17, 1931?

A. That is right.

Mr. Brandwen: Now, if your Honor please, I should like to offer, pending receipt of the original minutes, original exhibits, and copy of these two meetings in evidence with the privilege of having them exchanged for the originals when the originals come from Houston.

The minutes of June 17th, pages 41 to 44, inclusive, marked Exhibit 53, pages 1 to 4, inclusive.

(The last Exhibit offered was marked Comstock Exhibit 53, pages 1 to 4, inclusive.) [See Vol. of Exs. p. 113.]

Mr. Brandwen: The minutes of the meeting of the board of directors of July 11, 1931, which appear on pages 45 and 46, of this book, as Exhibit 54, pages 1 and 2.

(The last Exhibit offered was marked as Comstock Exhibit 54, pages 1 and 2.) [See Vol. of Exs. p. 118.]

Mr. Dearmont: If your Honor please, we will object to the offering of the original copies in the record because we will want to keep them.

Mr. Brandwen: We will take copies of them if these are copies; that is perfectly agreeable to do it that way. I don't want the responsibility for keeping the original copies.

Mr. Brandwen: (Q.) Mr. Cole, I show you this document and ask you whether you recall having received a copy of that before?

(Handing witness paper.)

A. No, sir, I don't recall having received that.

Q. You have means of ascertaining whether you did receive such copy? A. In the files in Houston, yes.

(The document last referred to was marked Comstock Exhibit No. 55.) [See Vol. of Exs. p. 120.]

Mr. Brandwen: We will look at them, of course, and

then if there is any inaccuracy in them we will call the attention of counsel and court. I offer this document in evidence. I want to say these have numbers on top, such as "C-16," that are written there from a prior hearing or I could have that recopied, but that can be disregarded.

Mr. McConaughy: Let it be understood that those letters are not part of the exhibit.

Mr. Brandwen: Yes, I want to make that perfectly clear.

Mr. McConaughy: So that there cannot be any reference here or in the record on appeal; it is completely out of the case.

Mr. Brandwen: Not the "C-16."

Mr. McConaughy: What you mean to say is that they are not on the exhibit.

Mr. Brandwen: That is not on the exhibit, and you may strike this out now.

Mr. McConaughy: You are not offering that in evidence, two of the previous exhibits that contained numbers like that?

Mr. Brandwen: They all contained numbers like this, like "C-16," and so forth.

Mr. Dearmont: I simply wanted to say counsel asked this witness to verify this and that document in the record, to expedite it copy should be furnished and contents of this to check up.

Mr. Brandwen: Yes, I will see to it that the witness has them. I understood from counsel for the Trustee that all of these would be checked.

Mr. Dearmont: I will be glad to verify them, but when you put something in the record that is not the physical work of this witness, I just was thinking about the modus operandi of having it checked. I should be given a copy of anything you want him to verify.

Mr. Brandwen: I will say that the witness has a copy of everything he has been asked to identify.

Mr. McConaughy: Let it be understood that you will have them some time today.

Mr. Brandwen: We have another copy I will let them go right away, otherwise, can you let them go temporarily—

Mr. McConaughy: No—

Mr. Brandwen: We will have them all typed up.

Q. Now, Mr. Cole, I show you this document and ask you whether you have ever seen this or a copy thereof before?

(Handing witness paper.)

A. No, sir, I don't recall having seen that.

Q. And you will make the same examination with respect to this document that you will with respect to other documents that have been offered? A. Yes, sir.

Mr. Brandwen: I now offer this letter in evidence.

(The document just offered was marked as Comstock Exhibit 56.) [See Vol. of Exs. p. 120.]

Mr. Brandwen: (Q.) From an examination of Exhibits 55 and 56, would you say that it was the practice for officers of the New Orleans, Texas & Mexico, to advise you of the amount that it was intended to have St. Louis, Brownsville & Mexico declare dividends at subsequent meetings?

A. Yes.

Q. That was the practice?

A. No, I don't say that it was the practice, but it is possible that they did advise me, and—

The Court: The reporter did not get your answer.

A. It is possible that I was advised of those amounts in order that I could see the amounts were correctly stated in the resolution prepared.

Mr. Brandwen: Did you make any independent examination of the operating figures of the St. Louis, Brownsville & Mexico? A. No.

Q. You did not? A. No.

Q. You just took these figures that were given to you by other departments of the St. Louis, Brownsville & Mexico? A. That is correct.

The Court: We will now adjourn until 2:00 p. m.

(Thereupon, court adjourned until 2:00 o'clock p. m.)

A. T. Cole,

having been previously duly sworn, upon resuming the stand, testified further as follows:

Direct Examination (Continued)

By Mr. Brandwen:

Q. Mr. Cole, I asked you shortly before you resumed the stand whether there were any minute [book] of the directors, and/or stockholders of the St. Louis, Brownsville & Mexico Railway Company, here in St. Louis, other than the ones that trustee's counsel produced the other day, and you stated—

A. There are no copies of prior minutes in St. Louis. Now, there may be other copies of those same minutes that are in that book maybe, in my office, but prior to 1930, I don't think there are any minutes in St. Louis.

Mr. Brandwen: Now, I should like to offer in evidence a resolution appearing in the minutes of the adjourned annual meeting of the board of directors of the St. Louis, Brownsville & Mexico Railway Company, held at Houston, on June 19, 1930, declaring a dividend of $131,075.01. I should like to suggest that this particular resolution may be marked, and then we should like to have the privilege of substituting it with a copy from the trustee's office.

(Said paper was thereupon marked by the Reporter as Comstock Exhibit 57.) [See Vol. of Exs. p. 121.]

Mr. Brandwen: I now offer in evidence resolution immediately following the preceding resolution in the same minutes of June 19, 1930, which resolution provides for the declaration of a dividend of $239,663.62, and I ask that

we have the privilege of substituting this with a copy furnished us by the trustee's counsel.

Mr. McConaughy: Do you want to mark that as a separate exhibit?

Mr. Brandwen: Yes.

(Said paper was so marked by the Reporter as Comstock Exhibit 58.) [See Vol. of Exs. p. 122.]

Mr. Brandwen: I now offer in evidence resolution from the minutes of the adjourned special meeting of the board of directors of the St. Louis, Brownsville & Mexico Railway Company, held at Houston, Texas, on December 6, 1930, providing for a dividend, for the declaration of a dividend of $178,568.70.

(Said paper was so marked by the Reporter as Comstock Exhibit No. 59.) [See Vol. of Exs. p. 122.]

Mr. Brandwen: I now offer in evidence resolution adopted immediately after the foregoing resolution in the same minutes, same meeting of the Board, providing for the declaration of a dividend by St. Louis, Brownsville & Mexico, of $381,590.66.

(Said paper was so marked by the Reporter as Comstock Exhibit 60.) [See Vol. of Exs. p. 123.]

Mr. Brandwen: I should like to have the record show that this minute book from which I have been having these excerpts introduced into evidence show that executive committee meetings were held for the St. Louis, Brownsville & Mexico Railway Company, and that they were held at 3600 Terminal Tower, Cleveland, Ohio, and that there were present Mr. O. P. Van Sweringen, L. W. Baldwin, and below that is written William Wyer, Assistant secretary.

Mr. McConaughy: Do you want to state the date?

Mr. Brandwen: Yes, July 8, 1930. Another one on August 12, 1930, same people present, at the same place. Next one September 2, 1930, same people present at the same place. Next one September 9, 1930, same people present, same place. December 18, 1930, at 3600 Terminal

Tower, Cleveland. Next one January 22, 1931, same people present, 3600 Terminal Tower, Cleveland. Next one April 14, 1931, 3600 Terminal Tower, Cleveland, same people present. Next one May 14, 1931, 3600 Terminal Tower, same people present. And I will get up a schedule of the other executive committees and those people present so as to save the court time and counsel time.

Q. Mr. Cole, there is nothing contained in any of the minutes from which I have read extracts and introduced them into evidence stating that any financial reports or financial data were submitted to the directors at the time of the declaration of these dividends, is that not correct?

Mr. McConaughy: Those are the ones he has looked at?

Mr. Brandwen: No, he hasn't looked at them yet.

Mr. McConaughy: You better let him look at them.

Mr. Brandwen: I want him to look at them. They are the meetings of June 19, 1930, and December 6, 1930. I have got them marked. You can see them.

The Witness: You said December 6, 1930?

Mr. Brandwen: I think the next one is December 6, 1930.

The Witness: There is nothing in the minutes to indicate that there were any statements submitted.

Mr. McConaughy: Q. Will you just state what minutes you looked at, Mr. Cole? A. Yes.

Q. And the dates of the meetings?

A. December 6th, and June 19th.

Q. (By Mr. Brandwen) 1930, both? A. 1930, yes.

Q. Those are the only resolutions dealing with the declaration of dividends by St. Louis, Brownsville & Mexico, other than those referred to in the meeting of June 17, 1931, and July 11, 1931, which have already been testified to, is that correct, in that volume?

A. I will have to check the books to see if that is correct.

Q. Would it take you long to do that?

A. Give me your dates again.

Q. You have looked at June 19, 1930, you have looked

at December 6, 1930, we already have June 17, 1931, we already have July 11, 1931. There are no others in that volume, are there, of minutes dealing with dividends? I tried to include them all.

Mr. McConaughy: You are speaking of directors' meetings only, aren't you?

Mr. Brandwen: If there are any executive committees meetings that deal with the declaration of dividends, I wish you would call them to our attention. I didn't see any. A. There were two on December 6th.

Q. Two, yes. And there were two on the June date also. Mr. Cole, I wonder whether we could not save some time if you will check this later and let us know whether my statement is not correct? A. Yes, sir.

Q. Now, one further question, Mr. Cole: In connection with the hearing on the claim that is now pending before this Honorable Court, have you prepared any memoranda or data, prior to the testimony which you gave this morning in court? A. Yes, sir.

Q. May I see what you have prepared?

A. Yes, sir (handing same to counsel).

Q. At whose request was this?

A. At the suggestion of Mr. Vollmer.

Q. And when did he make such request?

A. That suggestion? Oh, about ten days before this week.

Q. What is that?

A. About ten days before court opened on this hearing.

Q. And the data which you prepared were the lists of officers-directors of Missouri Pacific Railroad Company, and—

A. And New Orleans, Texas & Mexico, and St. Louis, Brownsville & Mexico.

Q. And that is all that you prepared?

A. Yes, sir; that is all. You have it all there.

Q. Have you given this data to anyone else, to anyone?

A. Yes, I made several copies of it.

Q. Do you know whom they were given to?

A. No, sir, I don't.

Q. Whom did you give them to?

A. Gave them to Mr. Vollmer.

Q. Mr. Vollmer is who; who is Mr. Vollmer?
A. Mr. Baldwin's assistant.
Q. Thank you.

Mr. McConaughy: That is all.

Mr. Kirschbaum: May I ask two questions?

The Court: Yes.

Cross Examination
By Mr. Kirschbaum:

Q. Mr. Cole, from 1930, down to 1933, was the stock of the St. Louis, Brownsville & Mexico Railroad, that is, the voting stock, completely owned by the N O T M?
A. Yes.
Q. It was? A. Yes, sir.
Q. Was the St. Louis, Brownsville & Mexico Railroad able to meet all its obligations at the time of the declaration of the dividends to which you have testified, so far as you know?

Mr. Brandwen: I object to that.

A. So far as I know, yes, sir.

The Court: Wait a minute. When you hear counsel making an objection, wait until he has time to make an objection, and the court has an opportunity to rule.

Mr. Brandwen: I object to that question.

The Court: What is objectionable about that question?

Mr. Brandwen: It calls for a conclusion as to whether—there is before this court full data, balance sheets and income statements of the road that speak for themselves.

The Court: This man is secretary of the company.

Mr. Brandwen: Yes, but I don't think he is in a position to make any comment on that. His answer is not at all competent, or relevant.

Mr. Kirschbaum: I think it is most relevant.

Mr. McConaughy: Is it your contention that full data is on the St. Louis, Brownsville & Mexico?

Mr. Brandwen: I think so.

Mr. McConaughy: You are willing to stand on that, are you?

Mr. Brandwen: I am not going to stand by any limitation.

The Court: I didn't understand what you said, Mr. McConaughy.

Mr. McConaughy: He made the statement in making the objection that the full data was before the court on the St. Louis, Brownsville & Mexico Railroad Company, and now he is taking it back.

Mr. Brandwen: No, I haven't taken anything back, I said that the data bearing on that question is before this court, and the way to get this before the court is by dealing with the specific facts underlying, rather than a conclusion.

Mr. Kirschbaum: If your Honor please, counsel has asked the witness with respect to certain financial statements which the witness said was not attached to the minutes. Counsel has been trying to give the inference to the court that these documents were for some reason, surreptitiously or otherwise, kept out of the minutes, and I think it is a fair question to clear it up to find out whether this witness knows whether the company at the time of the declaration of the dividends was solvent. I think that is important for this court to know, in view of the fact that the company was a completely owned and dominated company of the N O T M.

Mr. Brandwen: Moreover, I don't think it is proper cross examination.

The Court: Objection overruled. He may answer.

Mr. Brandwen: Note my exception.

Q. (By Mr. Kirschbaum) What is the answer, please?
A. So far as I know it was.

Mr. Kirschbaum: That is all.

Redirect Examination

By Mr. Brandwen:

Q. Will you please state to the court how you remember the fact as to whether the St. Louis, Brownsville & Mexico Railway Company was able to meet all its obligations?

Mr. McConaughy: I object to that question, he didn't make any statement of the kind that Mr. Brandwen attributes to him. He said as far as he knew.

Mr. Brandwen: Would you read the question and answer, please?

(Question and answer read.)

Q. (By Mr. Brandwen) Well, then, I ask you what material, what information do you recall or what material information did you have at the time that you now recall that enables you to answer that question as you did?

A. I have no information to show that the St. Louis, Brownsville & Mexico was not able to meet its obligations.

Q. Do you know what the obligations of the St. Louis, Brownsville & Mexico were at the time of the declaration of the dividends? A. I do not.

Q. You do not? A. No.

Q. You do not know what they were?

A. I have no figures on it.

Q. You have no figures, and you do not know—pardon me, your Honor.

The Court: Go ahead.

Mr. Brandwen: Q. And you do not know what its financial position—

Mr. McConaughy: Mr. Brandwen called this witness, now, he is trying to cross examine him.

The Court: Go ahead.

Mr. Brandwen: Q. What its financial position was at the time the dividends were declared?

A. I do not know that the St. Louis, Brownsville & Mexico could not meet its obligations at the time.

Q. You do not know what its financial obligations were in dollars and cents, do you? A. No.

Q. You do not know what it had in current assets at the time, do you? A. No.

Q. (By the Court) Did you know at that time?

A. At that time? Judge, that is a long time ago, I really couldn't say.

Q. You don't know now. You did know then what their obligations were?

A. Well, I didn't know then that they could not meet their obligations.

Q. What do you mean by that? You have no opinion on the subject?

A. No, I mean if they could not have met their obligations, I probably would have known.

Q. (By Mr. Brandwen) You don't know now what the current assets of the St. Louis, Brownsville & Mexico were at the time? A. No.

Q. You don't know what the current liabilities of St. Louis, Brownsville & Mexico were at the time of the declaration of dividends? A. No.

Q. You don't even know now, do you, what the obligations were of St. Louis, Brownsville & Mexico, if anything, at that time, at the time of the declaration of dividends?

A. No, I don't know.

Q. You don't. That is all. You have no questions?

Mr. McConaughy: No.

Mr. Brandwen: I am through with Mr. Cole, unless the court has something.

The Court: No.

EDWIN WAGNER,

of lawful age, being duly sworn on his oath to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Brandwen:

Q. Mr. Wagner, would you give the Reporter your full name and address?

A. Edwin Wagner, Kirkwood, Missouri.

Q. What is your present occupation?

A. I am treasurer for the trustee of the Missouri Pacific Railroad Company, and certain of its controlled and affiliated companies.

Q. How long have you been associated with the Missouri Pacific Railroad Company? A. Since 1926.

Q. And were you associated with New Orleans, Texas & Mexico or any of its subsidiaries since 1926? A. Yes, sir.

Q. What was the position that you occupied with New Orleans, Texas & Mexico from 1926 on?

A. From 1926 until I think about 1928, I was assistant treasurer, assistant secretary.

Q. Of New Orleans, Texas & Mexico? A. That is right.

Q. Did you have a similar office with any of the other companies that were subsidiaries of New Orleans, Texas & Mexico?

A. Oh, yes, practically all of the controlled companies.

Q. Mr. Wagner, where did you make your office during the period of 1926 to 1938?

A. From 1926 to 1930, we were in New York. From 1930 to 1938, we were in Cleveland, Ohio.

Q. To 1938, in Cleveland, Ohio? A. Yes, sir.

Q. Now, where did you make your office in New York?

A. At 120 Broadway.

Q. That was the office of what?

A. Office of the chairman of the board of the Missouri Pacific Railroad Company, and a number of other companies.

Q. And would you state what the other companies were that occupied those offices at 120 Broadway?

A. I couldn't very well remember them all, but they were practically all of the controlled and affiliated company of Missouri Pacific Railroad Company, including the Texas & Pacific Company, which is not in these proceedings, the Wabash Railroad had its offices in the same building, the same gentleman was chairman of the board of both companies.

Q. And the same offices?

A. No, they had separate offices, but the chairman only used one office.

Q. The chairman of the board of directors of the Mis-

ouri Pacific was also chairman of the board of directors of the New Orleans, Texas & Mexico?

A. That is right.

Q. That was Mr. Williams? A. Williams.

Q. And he was also an officer of the Wabash Railroad?

A. He was chairman of the board of the Wabash.

Q. And your offices surrounded that of Mr. Williams?

A. Yes, that is right.

Q. And in your capacity as assistant treasurer of the New Orleans, Texas & Mexico, working in the assistant treasurer's office in New York, what did you do, what activity did you engage in?

A. As assistant secretary and assistant treasurer my duties concerned themselves with the transfer office where we paid interest, transferred stock, and things of that sort.

Q. Stock of New Orleans, Texas & Mexico?

A. Also of the Missouri Pacific.

Q. Also of the Missouri Pacific? A. No.

Q. Do you know what relationship there was between the New York's treasurer's office of New Orleans, Texas & Mexico, as you described it, of New Orleans, Texas & Mexico, in this suite of offices and the offices of the New Orleans, Texas & Mexico, at Houston, Texas? A. No, sir.

Q. Did you deal with operating matters in this office, this treasurer's office? A. No, sir.

Q. Just dealt with financial matters?

A. That is right.

Q. Did you ever get in touch with anybody in the New Orleans, Texas & Mexico, at Houston, about any of these matters? A. I can't recall a single case.

Q. You can't? A. No, sir.

Q. When there was any occasion to get in touch with anybody respecting financial matters affecting New Orleans Texas & Mexico, whom did you, or any of your associates get in touch with?

A. I can't speak for my associates, of course, but as far as I am concerned, I had nothing to do with financial matters in New York.

Q. You had nothing at all to do with them?

A. No, sir, except paying interest and so on, as I have related.

Q. I see. And when was this treasurer's office moved from New York to Cleveland?

A. In the summer of 1930.

Q. And where were the offices moved to in Cleveland?

A. In the Terminal Tower.

Q. The Terminal Tower Building?

A. In Cleveland, Ohio.

Q. And what was the nature of your activities when you moved to Cleveland, your own personal activities?

A. Of course, we had no transfer office after we moved to Cleveland.

Q. You had none in Cleveland?

A. That is right. It required that that office be in New York.

Q. That is, the New York Stock Exchange requirements required the transfer office—

A. —to be in New York. J. P. Morgan & Company were then employed to do that work for us. My duties in Cleveland were to generally assist the secretary and treasurer in the management of the office.

Q. And the secretary-treasurer was Mr. Wyer?

A. That is right.

A. Yes, sir.

Q. And you paid interest on bonds of the New Orleans Texas & Mexico? A. Yes, sir.

Q. And the Missouri Pacific? A. That is right.

Q. And other roads? A. Various other roads.

Q. And who was your immediate superior?

A. As assistant secretary and treasurer, Mr. Wyer.

Q. I see.

A. No, I beg your pardon, Mr. Huntsman was my immediate superior. Mr. Wyer was treasurer, and, of course, was superior to Mr. Huntsman.

Q. Mr. Huntsman's position was what?

A. His position was vice-president and, I think, assistant secretary and assistant [treasurer].

Q. And what participation did you have in connection with financial transactions of New Orleans, Texas & Mexico that were engaged in the New York office other than this relating to interest payments and dividend payments and transfer of stock? A. None whatever.

Q. None whatever?

Q. And can you particularize in a little more detail as to what the nature of your activities was?

A. Well, let's see, when Mr. Wyer was out of town, of course, it devolved on me to be in charge of the office except on Texas & Pacific matters, another gentleman handled that. When Mr. Wyer was in the office we frequently handled whatever was necessary and mail that came in and we prepared the minutes of the meetings of the various companies, programs for the directors which were prepared before the meetings, we handled the New York and Cleveland bank account.

Q. And when you had occasion to get in touch with New Orleans, Texas & Mexico officials in connection with financial matters, did you get in touch with anybody at Houston? A. No, sir, not that I recall.

Q. Whom did you get in touch with?

A. I can't say I ever got in touch with anybody personally, but if I did, and it is possible I did, it would have been Mr. Barnes of St. Louis.

Q. And who is Mr. Barnes in St. Louis?

A. Mr. Barnes was in the president's office in St. Louis.

Q. That is in Mr. Baldwin's office?

A. Yes, sir. It is also possible that I might have talked with Mr. Johnson at some time. I don't recall any specific case.

Q. Whose office was also in St. Louis?

A. That is right.

Q. When you were in the treasurer's office in Cleveland, you never got in touch with any of the New Orleans, Texas & Mexico officials in Houston, or in Texas?

A. I did not.

Q. You spoke a little while ago about arranging the program for the directors of New Orleans, Texas & Mexico? A. Yes, sir.

Q. Am I correct in understanding that you mean thereby, arrange for the financial program?

A. Well, the whole program of the meeting. There were various things besides financial matters on the program, but the subjects which were to be considered at the meeting were listed.

Q. And was it your practice to go over the financial requirements of New Orleans, Texas & Mexico, even for the following month, or the following period?

A. Insofar as requirements in the East were concerned.

Q. In what?

A. In the East, that is, in the New York office where concerned, we had nothing to do with the financial requirements down in Houston.

Q. The New Orleans, Texas & Mexico Railway Company does not have any office or does not go through Cleveland or through New York, in any way, does it?

A. No, sir.

Q. As a railroad? A. No, sir.

Q. Doesn't touch any of those places at all? A. No, sir.

Q. Or remotely, even? A. No, sir.

Q. So I should like to ask you now to particularize a little more fully as to what you mean by the financial program of the New Orleans, Texas & Mexico, so far as the East is concerned?

A. If we had interest to pay on bonds in New York, or if we had bills to pay in New York, salaries of our Cleveland offices or dividends or sinking funds under the mortgages, we would look at the check book, see what money we had available to do it, if we didn't have enough, of course, we would talk it over and see what was needed, that is, within our office. I didn't talk this over with anybody in Texas or St. Louis, but Mr. Wyer and myself did or possibly, the chief clerk or the cashier.

Q. Might do what? A. We might go over the subject.

Q. Yes.

A. I don't recall any specific conversation, but I know that was the general practice.

Q. And you would consider what the dividend requirements were, what the interest requirements were, and see whether there was enough money in the bank accounts of the New Orleans, Texas & Mexico to pay those?

A. Yes. We considered all requirements that we had to meet.

Q. And if there weren't enough, if there wasn't enough money in the bank account, what would you do?

A. I wouldn't do anything, but Mr. Wyer, of course, would be informed of it.

Q. I see. And arrangements were presumably made thereafter to take care of those requirements?

A. Presumably so.

Q. But you had nothing at all to do with them?

A. I can't recall any specific case. I may have talked to Mr. Barnes or Mr. Johnson about it, but I don't recall that I ever did. It wouldn't be unnatural if I should.

Q. Now, when you said before that all that your office dealt with was with respect to the financial problems of the road in the East, was that confined to you or to the entire office in Cleveland?

A. I don't believe I quite understand that.

Q. When you said before that you in the Cleveland's office addressed yourself to the financial requirements of New Orleans, Texas & Mexico in the East, I would like to know whether that was something that you personally limited yourself to, or whether that was the task of the treasurer's office in Cleveland?

A. Oh, I assume that was the task of the treasurer's office.

Q. In Cleveland? A. Yes. We all discussed it.

Q. You just dealt with the financial problems of the road so far as the East was concerned?

A. That is all I dealt with, yes.

Q. That is all, Mr. Wagner.

Mr. McConaughy: May we take about two minutes, Your Honor?

The Court: Yes.

Mr. McConaughy: (After conference) No cross examination.

Mr. Brandwen: No cross examination?

The Court: No cross examination.

Mr. McConaughy: Mr. Wagner doesn't need to wait, does he?

The Court: No, they are finished with the examination.

L. W. BALDWIN,

a witness of lawful age, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination,

By Mr. Brandwen:

Q. Mr. Baldwin, will you please give your name and address? A. L. W. Baldwin; St. Louis.

Q. And your occupation, Mr. Baldwin?

A. My present occupation is Chief Executive Officer for the Trustee, and president of all the debtor corporations.

Q. President of what? A. All the debtor corporations.

Q. And you have been president of the corporations that you describe as debtor corporations for how many years, do you recall?

A. Of the Missouri Pacific since 1923; of the others only after acquisition.

Q. That was when?

A. Except in a few very small ones which I don't even know that I could classify.

Q. So that from sometime in 1924, you became president of the New Orleans, Texas & Mexico? A. Yes.

Q. And you have made your office in St. Louis exclusively, have you, since you assumed your post as president of the various roads? A. I have.

Q. You have been addressing yourself in your work with these various railroads in what particular capacity?

A. You mean since the bankruptcy?

Q. No. Prior from 1923 of Missouri Pacific and from 1924 of New Orleans, Texas and Mexico, what was the nature of your activity? A. I was president.

Q. And as president you concerned yourself during that entire period with all problems in which those roads were involved? A. I tried to.

Q. That is, operating problems and financial problems, both, did you not?

A. Yes, to some extent. Financial problems not to the same extent as operating problems.

Q. And the Missouri Pacific Railroad does not touch at any point New York or Cleveland, does it? A. No.

Q. Did you have much contact with the treasurer's office in New York of Missouri Pacific or New Orleans, Texas & Mexico? A. Not a great deal.

Q. But you did have contact with the treasurer's office of New Orleans, Texas & Mexico in New York?

A. To some extent.

Q. And can you state what the nature of that contact was? A. No, I couldn't state it.

Q. You couldn't?

A. It would be quite indefinite. Largely being a good fellow, I guess, and interested in the property.

Q. And I presume you succeeded in that very well?

A. Thank you.

Q. Now, Mr. Baldwin, you know that New Orleans, Texas & Mexico declared dividends each year beginning with January 1, 1925, to the end of 1931, do you not?

Mr. McConaughy: Why don't you ask the financial officer about that? Mr. Baldwin was the president, the chief executive officer. I can't understand why you have to ask Mr. Baldwin this kind of a question. It can be obtained in a much quicker and better way.

The Court: Read the question.

(Question read.)

The Court: The objection is overruled, if there is an objection.

A. I know there were dividends, from the record, dividends declared, the first one January 27, 1925, and the last one October 13, 1931. I don't think there are any missing. I haven't personally checked that.

Q. (By Mr. Brandwen) Yes, that covers a period of seven years. Now, Mr. Baldwin, I show you a letter addressed to you, which was taken, copy of which was taken from your files.

Mr. McConaughy: Now, Mr. Brandwen, don't you think you ought to explain that that has not been checked?

Mr. Brandwen: I am going to have Mr. Baldwin, I want Mr. Baldwin to have a full opportunity of examining this, and making such comments as Mr. Baldwin [things] ap-

propriate. I am not going to have the letter offered in any other way. I simply am telling Mr. Baldwin about this. Would you please look at it, Mr. Baldwin, and see whether that refreshes your recollection?

A. Not specifically, no.

Q. Well, Mr. Baldwin, may I ask you to have the checked after you—

A. Do you mean by that, my answer, that I have said I didn't get the letter?

Q. No, no; you say you don't remember it specifically?

A. That is right.

Q. You are not saying you didn't receive it? A. No.

Mr. McConaughy: And is that letter in evidence?

Mr. Brandwen: I would like to offer it in evidence. Do you want to look at it?

Mr. McConaughy: Have you got another copy?

Mr. Brandwen: Yes.

(Said letter was marked by the reporter as Comstock's Exhibit 61.) [See Vol. of Exs. p. 123.]

Q. (By Mr. Brandwen) Now, I show you this document, Mr. Baldwin, which purports to be copy of a letter sent by you to Mr. Safford in reply to Exhibit 61, which you just saw?

Mr. McConaughy: Please make clear that it wasn't copied directly from the Missouri Pacific files.

A. That letter was supposed to have been written January 14, 1926, which is fifteen years ago.

Q. (By Mr. Brandwen) Eighteen years ago. A. How?

Q. Eighteen. A. Yes.

Q. Nineteen years now.

A. Certainly I couldn't remember the specific letter, and do not. I don't deny that you got it from my files.

Q. Or, rather, shall we state that you don't deny that a copy, the original copy of that is in your files? A. No.

Mr. Brandwen: I offer this in evidence.

(Said document was marked by the reporter as Comstock's Exhibit 62.) [See Vol. of Exs. p. 124.]

Q. (By Mr. Brandwen) I assume, Mr. Baldwin, you do not have with you a record of the dates of the meetings of the Board of Directors of New Orleans, Texas & Mexico, which declared the dividends referred to by these Exhibits 61 and 62, these last two letters that you looked at?

A. I couldn't identify them. I could give you the dates of the meetings that declared dividends.

Q. Well, do you have data with you which—well, will you state, please, what were the dates of the meetings of the Board of Directors of New Orleans, Texas & Mexico which declared dividends in the year 1925?

Mr. McConaughy: Your Honor, I object to that. Why should the president of the Missouri Pacific Railroad have to be listing dates of that kind, taking time that way?

The Court: Can't you get that testimony from other witnesses?

Mr. Brandwen: No, not the dates when meetings were held.

Mr. McConaughy: He can put that in through any kind of a clerk. Why do we have to waste that kind of time?

Mr. Brandwen: All right, I will do that if your Honor wishes.

The Court: I do think you ought to be as considerate of Mr. Baldwin's time as possible. He has a big job with the railroad system.

Mr. Brandwen: I will do that, and I will withdraw that question and simply ask him this question, just this one question:

Q. Mr. Baldwin, I now show you a letter dated October 7, 1926, which purports to have been sent to you, copy of which was taken and copied from the files.

A. I have no doubt that this came from my files. However, I can't verify it.

Q. I know.

Mr. Brandwen: I know. I offer this in evidence.

(Said letter was marked by the reporter as Comstock's Exhibit 63.) [See Vol. of Exs. p. 125.]

Q. I now show you a letter, Mr. Baldwin, sent to Mr. Safford, dated October 14, 1926, in response to the letter which you just saw, dated October 7th, 1926.

A. It shows signed by L. W. Baldwin, per W. G. V. That is Mr. Vollmer, and I believe it came from a copy of a letter in my files. I don't remember the letter.

Q. Mr. Vollmer is your assistant? A. Yes.

Mr. Brandwen: I offer this letter in evidence.

Mr. McConaughy: Are you going to continue this, Mr. Brandwen?

Mr. Brandwen: I am going to offer a series of letters.

Mr. McConaughy: I ask why that has to be done? All these other papers he has been able to put in and we agreed to them. Why should Mr. Baldwin have to take his time from running a railroad in war time to identify this group of letters?

Mr. Brandwen: Well, will you let me have all of these letters introduced?

Mr. McConaughy: You can put them in subject to check.

Mr. Brandwen: All right, we will do that, that is all right. I just didn't want to have any question raised about that. If that is it, we can save a good deal of time. I would like to ask Mr. Baldwin just a few questions with respect to some of these matters. Mark this as an exhibit.

(Said letter was marked by the reporter as Comstock's Exhibit 64.) [See Vol. of Exs. p. 125.]

Mr. Brandwen: Would your Honor like to see this? (Handing same to the Court.)

Mr. Brandwen: Well, then I am perfectly willing to adjourn with Mr. Baldwin for a while so that we can have these letters offered.

Mr. McConaughy: What do you mean for a while?

Mr. Brandwen: I want to ask Mr. Baldwin about some of these letters.

Mr. McConaughy: You can't ask him now?

Mr. Brandwen: No, I want these letters in first.

Mr. McConaughy: Well, put them in, then. Let's be considerate of Mr. Baldwin's time. Why don't you put the letters in and we will check them later.

Mr. Brandwen: All right, I offer that in evidence.

Mr. McConaughy: Put them in as one exhibit.

Mr. Brandwen: Mark these exhibits.

(Said papers were marked by the reporter as Comstock's Exhibits 65 to 70, inclusive.) [See Vol. of Exs. pp. 126-128.]

Mr. Brandwen: Now, mark these.

(Said papers were marked by the reporter as Comstock's Exhibits 71 to 79, inclusive.) [See Vol. of Exs. pp. 129-133.]

Mr. Brandwen: And these.

(Said papers were marked by the reporter as Comstock's Exhibits 80 to 84-A and 84-B, inclusive.) [See Vol. of Exs. pp. 133-137.]

Mr. Brandwen: And these.

(Said papers were marked by the reporter as Comstock's Exhibits 85 to 90, inclusive.) [See Vol. of Exs. pp. 137-139.]

Mr. Brandwen: Would you want them delivered to you right now, or shall I go on?

Mr. McConaughy: No, go right ahead.

Q. (By Mr. Brandwen) Mr. Baldwin, I would like to know whether you recall anything at the moment about the dividends amounting to in excess of four million dollars that were declared by St. Louis, Brownsville & Mexico in the year 1931, to New Orleans, Texas & Mexico?

A. I remember there was—whether that is just the right amount or not, I don't know, but it was in that vicinity of that amount in that year.

Q. Do you remember the circumstances underlying the declaration of such large dividends at that time?

A. It was to pass certain moneys on to the N. O. T. M. That was the only way that I knew to pass money to the N. O. T. M., and the N. O. T. M. held the bonds and all the stock of the property. Just what it was used for, I don't know.

Q. You don't know? A. No.

Q. May I ask you this, Mr. Baldwin: were you consulted before it was decided by the directors of St. Louis, Brownsville & Mexico to declare those large dividends in 1931?

A. The one, one I was, I know, and I think I was present at, I think, one or two meetings in 1931 where they declared them.

Q. I see. Mr. Baldwin, you have been attending Court while the hearings on this claim have been going on throughout the week, haven't you? A. Yes, off and on.

Q. And you have been listening?

A. Without any regularity.

Q. And you have been listening to the testimony?

A. Some of it.

Q. May I ask you if you recall now, Mr. Baldwin, who spoke with you about the declaration of that large dividend of $3,500,000.00 declared by St. Louis, Brownsville & Mexico in July of 1931?

A. I don't remember who spoke to me about it. There was some correspondence on the subject. I know it was necessary to do it in order to meet the requirements, it was thought necessary by all of us.

Q. What was that last?

A. It was thought necessary to do it by all of us in order to meet the cash requirements of the N. O. T. M.

Q. Do you know now or did you know then whether St. Louis, Brownsville & Mexico had the money to pay that dividend?

A. I didn't know whether they had the cash or not. They had the wherewith in some way.

Q. You did know that. Do you know whether it ever got the cash to pay that dividend?

A. I have heard since they did not.

Q. When you say you heard since, may I ask, since the hearings began?

A. No, it was in 1933 there was an adjustment which showed it.

The Court: What was the last?

The Witness: In 1933 there was an adjustment made when I knew it.

Mr. Brandwen: Q. And you hadn't heard prior to December, 1933, when the adjustment was made that St. Louis, Brownsville & Mexico did not have the cash with which to meet the dividend?

A. I don't think I did, Mr. Brandwen, but I couldn't definitely say I did.

Q. I am just trying, you understand, just to get your best recollection.

A. I am trying, too. I always thought of those properties, you understand, as one property. It never meant anything to me but one railroad, and I didn't know when I got off of one and onto the other.

Q. And that was true whether you were dealing with the Missouri Pacific or the New Orleans, Texas & Mexico or the St. Louis, Brownsville & Mexico, or any of those?

A. No, it wasn't that way. Those properties I am talking about were Gulf Coast Lines, other than the I. G. N.

Q. You regard the I. G. N. as something entirely separate from the New Orleans, Texas & Mexico and their subsidiaries?

A. Yes. But the others, frankly, I didn't know when I got off of one and onto the other at times. I don't mean none that I knew, but I mean it took me some time to find out where the Beaumont, Sour Lake & Western was, where it started and ended, and where the N. O. T. M. started and ended.

Q. But you put International Great Northern in quite a different category in your mind? A. Yes.

Q. May I ask you to tell us why you distinguish those, the International Great Northern and the New Orleans, Texas & Mexico and its subsidiaries?

A. Well, it was a different kind of a railroad, it had to be operated differently, took different kind of power, it took heavier rail, and I never thought of them in the same light. I rather considered from a general view it might be a subsidiary of the Missouri Pacific, and that is because, further, because the reason we got those lines was because we wanted the I. G. N.

Q. You wouldn't have taken the Gulf Lines if the Missouri Pacific hadn't taken the I. G. N.?

A. I imagine we wouldn't. I know we went in to get the I. G. N. and it was taken, and we had to then make the deal for the N. O. T. M.

The Court: I didn't get that last.

The Witness: In order to get the I. G. N. it was necessary to deal for the N. O. T. M.

The Court: But you added something to that. I didn't get it.

The Witness: If I did, I don't place it.

Mr. Brandwen: Q. Now, tell us about that difference a little more between the I. G. N. and the New Orleans, Texas & Mexico with respect to the territory.

A. Well, I will tell you another thing about it, the I. G. N. bonds weren't owned by the N. O. T. M.

Q. Yes, and that made quite a difference in your mind?

A. That made quite a difference, and the other two, the bonds and the stock and everything, was owned by the N. O. T. M.

Q. Now, Mr. Baldwin, dealing with any distinction that you made, say, between the I. G. N. and the N. O. T. M. so far as territory was concerned, were they contiguous lines or did they go off each in their own way?

A. Well, they were, I would say—if you are going to describe it in a short sentence, you would say they went off in their own way, but they had common points.

Q. They had common points, but over certain areas there were connecting roads that just connect it in some cases only with I. G. N., and in other cases only with N. O. T. M.? A. That is right.

Q. That is correct, is it not?

A. That is right. And when you say N. O. T. M., I still include all the railroads.

Q. You include N. O. T. M. and its subsidiaries other than I. G. N.? A. That is right.

Q. And beyond the fact that you were told, advised that N. O. T. M. needed some money or needed some kind of transfer of funds or credits to it in 1931, you didn't go

Into the question as to whether St. Louis, Brownsville & Mexico could or could not pay that large dividend?

A. Well, I had some correspondence with Mr. Safford on the subject, and he and the attorney both said it was all right, and they asked to have a Board meeting rather than an Executive Committee meeting to pass that dividend.

Q. And the attorney was this Mr. Andrews?

A. Frank Andrews.

Q. Did you give much thought at the time to the financial position of the New Orleans, Texas & Mexico and its various subsidiaries? A. Among them, you mean?

Q. Yes.

A. I would say no to that, but I would also say that I never understood we declared any dividend or proposed to declare any dividend that wasn't out of either cash or surplus.

Q. And did you make an examination of those accounts yourself? A. I did not.

Q. Those profit and loss accounts? A. No.

Q. You addressed yourself primarily to the operating problems of those roads?

A. Well, I no doubt saw the balance sheet of the N. O. T. M., but I didn't go into any of the details of the relationship between the two among all of them except so far as something like you just talked about.

Q. Mr. Baldwin, you remember, do you not, that shortly after Missouri Pacific acquired the stock of New Orleans, Texas & Mexico, that there were some other railroads in Texas that were acquired? A. Yes.

Q. And they were described very often as so-called short lines, is that correct?

A. I don't remember about the so-called short lines.

Q. But there were certain railroads acquired, so-called?

A. Some of them were short lines; some of them I particularly remember was not particularly short lines.

Q. And with what road did those lines, the three roads tie up with, that is, the International Great Northern, the New Orleans, Texas & Mexico and its subsidiaries?

A. Well, the S. A. U. & G.

Q. That is the San Antonio, Uvalde & Gulf?

A. Yes. It ties up with both the I. G. N. and the Gulf Coast. Another one was the Sugar Land Railroad, that tied up with the I. G. N. Another one was the San Antonio-Southern, that ties up with the I. G. N.

Q. The Asherton & Gulf?

A. Asherton & Gulf, it ties up with the I. G. N. I am not sure whether it ties up with the S. A. U. & G. or not.

Mr. McConaughy: Your Honor, I think this is getting unduly protracted again. This kind of information can be obtained from somebody else just as easily as Mr. Baldwin, and Mr. Brandwen knows where the railroads are, if he wants to discuss them all he has to do is to ask him about them. Why get an enumeration of railroads?

Mr. Brandwen: No, just that Mr. Baldwin, I think, is certainly a very good operating man. I just wanted—I think probably the best operating man in the system. I thought it would be best to get this information from him.

Mr. McConaughy: Your Honor, I don't see why we had to take Mr. Baldwin's time to get a list of railroads.

The Court: Yes, I think you can get that from somebody else than an outstanding operator.

Mr. Brandwen: Mr. Baldwin has been listening to this testimony all this week and he is interested in this, I am quite sure.

The Witness: I am interested to see this road reorganized.

The Court: Are you?

The Witness: Yes, I am.

Mr. McConaughy: Now, you have made a statement, Mr. Brandwen, I think we better clear up, while Senator Dearmont is here. You point to the fact that Mr. Baldwin has been in court for some time. Did you ask to have him here?

Mr. Brandwen: I asked to have him here today, yes.

Mr. McConaughy: Let's have it understood clearly.

Mr. Brandwen: I told Senator Dearmont that we would be calling a number of people, and I asked him whether, or Mr. Biggs did ask him whether counsel for the Trustee wouldn't arrange to see that these men were available during the course of the week. I did not ask, so far as I can recall, counsel for the Trustee to have Mr. Baldwin here before today.

Senator Dearmont: I was asked to get him just before the hearing began, and Mr. Vollmer, Mr. Peet, Mr. Eckert, Mr. Wagner and Mr. Cole here as witnesses.

Mr. Brandwen: That was asked by Mr. Biggs.

Senator Dearmont: That is correct.

Mr. Biggs: I didn't state it was necessary to have them in the courtroom all the time.

The Court: I hope, Mr. Brandwen, that you can get this testimony, as much of it as you can get from somebody else, that you spare Mr. Baldwin's time.

Mr. Kirschbaum: If your Honor please, will you please instruct counsel to try to get this examination as pertinent to the issue as possible? This was a very interesting dissertation, but I don't see the relevancy or pertinency of all this.

Mr. Brandwen: If your Honor please, I imagine if Mr. Kirschbaum will read the papers and hear the final argument, I think he may appreciate the pertinency. Until such time as he reads what is in the exhibit or sees the document, I don't see how he can make any comment on pertinency or relevancy.

Q. I will just ask you this question, Mr. Baldwin, at this point, do you know anything at all about the purchase of International Great Northern Railroad Company adjustment mortgage bonds in the year 1927 by New Orleans, Texas & Mexico? A. No, I don't.

Q. You don't. You don't recall anything with respect to that? A. No.

Q. Then I shall not ask you about it. You know nothing at all about their acquisition in 1927 and you know nothing at all about any subsequent pledge?

A. I don't first hand know anything about it. I heard some discussion about it in recent days, but if I knew about it at the time I have forgotten it.

Q. You had nothing to do at all with the arrangements made for the purchase of these International Great Northern adjustment bonds in 1927?

Mr. McConaughy: I object to that. He said he doesn't recall. That ought to settle that.

A. I don't remember that I did.

Mr. Brandwen: Well, if your Honor please, I am not going to ask Mr. Baldwin any further questions. I shall accept your Honor's suggestion and try to get this information.

The Court: Are you through with Mr. Baldwin?

Mr. Brandwen: Yes, I am.

The Court: Colonel Baldwin, they are through with you.

The Witness: Thank you, sir.

The Court: Announce a five minute recess.

(Five minute recess.)

Mr. Brandwen: Shall I proceed?

The Court: Well, wait until a few more come.

Mr. Brandwen: If Your Honor please, you undoubtedly recall that when Mr. Eckert left the stand this morning he stated he was going to try to get some additional material.

The Court: Yes.

Mr. Brandwen: Mr. Cole is trying to get some additional material for us. I have no further testimony to offer at this point. There will be certain documentary material which we have not gathered together, but I don't think we will have to use any witnesses for that. To save the time of the Court and counsel I was going to get that

together at a convenient time. Under the circumstances, I have nothing further to say.

The Court: It is four o'clock. I will adjourn this hearing today over until Monday. The Court has some accumulated matters to take care of tomorrow. If counsel have anything they care to put in at this time, they may do so.

Mr. McConaughy: We have nothing to put in at this time, your Honor.

The Court: Might as well adjourn at this time, then, until Monday morning at ten o'clock.

Mr. McConaughy: That will be satisfactory.

(At this point, 4:00 P. M., January 12, 1945, the Court announced an adjournment until Monday morning, January 15, 1945, at ten o'clock, with the direction to the bailiff that announcement be made that all parties and witnesses interested in the cause now before the Court be excused until Monday morning, January 15th, 1945, at ten o'clock.)

Met, pursuant to adjournment as above, on January 15, 1945, at ten o'clock A. M., whereupon the following proceedings were had:

The Court: You may proceed with the Missouri Pacific matter.

Mr. Brandwen: If Your Honor please, I stated at the close of the Friday session that I was waiting for some material that Mr. Eckert stated that he was going to get. I spoke to him this morning and he said the stuff is being worked on and has not yet come in, but he hopes to be able to have it soon. Meanwhile, I think I can introduce some documentary material and we can get that out of the way.

I should like to have marked in evidence, with the privilege of substituting copies prepared by the office of counsel for Trustee, excerpts from the minutes of the Directors of the Missouri Pacific, a meeting held in New York on April 10, 1924. The material begins on the second

page and goes on for several pages. It deals with the acquisition of stock of the New Orleans, Texas & Mexico by Missouri Pacific.

Mr. McConaughy: You are starting here (indicating)?

Mr. Brandwen: Yes. Beginning with page 2, to a page that would be page 5 if it were numbered.

Mr. McConaughy (after examining document): Do you object to putting in the entire minutes? What I would like to have is the minutes showing who was present.

Mr. Brandwen: I can state who was present. That is all you want?

Mr. McConaughy: That is all right.

Mr. Brandwen: We can do that. At the suggestion of Mr. McConaughy, I also offer the material at the beginning of the minutes, showing where the meeting was held and who were present.

(The document last offered in evidence was thereupon marked Comstock Exhibit 91.) [See Vol. of Exs. p. 140.]

Mr. Brandwen: Would Your Honor like to see the minutes (handing same to the Court)?

I should now like to introduce in evidence a resolution, from the minutes of the Executive Committee of the Missouri Pacific, held in New York, July 7, 1926.

Mr. McConaughy: I make the same request, for a statement of who was present.

Mr. Brandwen: I am perfectly delighted to do that, Mr. McConaughy.

Then, Your Honor, I shall supplement my offer, according to Mr. McConaughy's suggestion, to have incorporated the statement that these are the minutes and the statement of those who were present.

(The minutes last offered in evidence were thereupon marked Comstock Exhibit 92.) [See Vol. of Exs. p. 145.]

Mr. Brandwen: I now offer in evidence material from the minutes of the Executive Committee of the Missouri Pacific, held in New York on November 11, 1926, and I am

indicating what I would like to have in (indicating to Mr. McConaughy).

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 93.) [See Vol. of Exs. p. 146.]

Mr. Brandwen (to the Court): This will be quite a task on your eyesight, because it is a very light copy (handing Exhibit 93 to the Court).

I should now like to offer in evidence an item from the minutes of the Executive Committee meeting of the Missouri Pacific, held in New York on December 27, 1927 (handing exhibit to Mr. McConaughy).

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 94.) [See Vol. of Exs. p. 149.]

Mr. Brandwen: I now offer in evidence an item from the minutes of the Executive Committee of the Missouri Pacific, of a meeting held in New York February 11, 1930 (handing exhibit to Mr. McConaughy).

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 95.) [See Vol. of Exs. p. 150.]

Mr. Brandwen: I now offer in evidence items from the minutes of the Executive Committee meeting of the Missouri Pacific, held in New York on February 4, 1930.

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 96.) [See Vol. of Exs. p. 151.]

Mr. Brandwen: I now offer in evidence items from the minutes of the Executive Committee of the New Orleans, Texas & Mexico, held in New York on February 4, 1930, and I should like to have the record show that there is an insert in pen, this item stating the following, after the words "Advance $100,000. to this company," the following insert in pen "Carrying interest at five per cent.", which is written in pen and ink and has the initials of Mr. Wyer, in handwriting I can not identify.

Mr. Wyer: Mr. Williams'.

Mr. Brandwen: The handwriting of Mr. Williams, according to Mr. Wyer, and Mr. Wyer has his initials on this.

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 97.) [See Vol. of Exs. p. 152.]

Mr. Brandwen: I offer in evidence items from minutes of the meeting of the Executive Committee of the Missouri Pacific, held on March 4, 1930, in New York.

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 98.) [See Vol. of Exs. p. 153.]

Mr. Brandwen: I now offer in evidence several items from minutes of a meeting of the Executive Committee of the Missouri Pacific, held in New York on April 3, 1930.

Mr. McConaughy: I object to this, Your Honor. These minutes deal with an advance to the Missouri Improvement Company. What that has to do with the issues in Objection 19—I think that is the number—I don't see.

Mr. Brandwen: That is one of the items I am offering. That is not the only item I am offering.

Mr. McConaughy: I object to that part of it.

Mr. Brandwen: Do you want to look at the other before you make your objection, or do you want to make this just the same?

(Here ensued private discussion between Mr. Brandwen and Mr. McConaughy.)

Mr. Brandwen: You object only to the one item showing an advance to the Missouri Improvement Company?

Mr. McConaughy: Yes.

Mr. Brandwen: Will Mr. McConaughy agree that the Missouri Improvement Company was a subsidiary of the Missouri Pacific?

Mr. McConaughy: Yes.

Mr. Brandwen: The reason I am putting both in is because you have two advances in the same meeting, and one provides for a rate of interest and the other provides for no rate of interest.

The Court: It will be admitted.

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 99.) [See Vol. of Exs. p. 154.]

Mr. Brandwen: If Your Honor please, I should now like to offer an item from the minutes of a meeting of the Board of Directors of the Missouri Pacific, held in Cleveland on December 18, 1930.

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 100.) [See Vol. of Exs. p. 155.]

Mr. Brandwen: If Your Honor please, I now offer in evidence excerpts from minutes of a meeting of the Board of Directors of the Missouri Pacific, held in Cleveland on May 14, 1931.

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 101.) [See Vol. of Exs. p. 156.]

Mr. Brandwen: I now offer in evidence excerpts from minutes of a meeting of the Board of Directors of the Missouri Pacific, held in Cleveland on July 14, 1931.

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 102.) [See Vol. of Exs. p. 159.]

Mr. Brandwen: If Your Honor please, I now offer in evidence excerpts from minutes of a meeting of the Board of Directors of the Missouri Pacific, held in Cleveland on April 12, 1932.

(Here ensued private colloquy between Mr. McConaughy and Mr. Brandwen.)

Mr. McConaughy has asked me to add to my offer in evidence, the material that I designated, additional material. Inasmuch as he requested it, and since he will

have the information before the Court, I will have no objection.

The items Mr. McConaughy asked me to offer, in addition to what I intended to offer, was the items dealing with advances to Texas-Pacific, I.-G. N., New Orleans, Texas & Mexico—I object to one item here, dealing with security for advances, and I should like to have my consent modified to that extent.

The Court: Very well.

Mr. Brandwen (to Mr. McConaughy): If you want to offer it when you come on, you may.

Mr. McConaughy: If I may, I should like to have the portion of these minutes, which Mr. Brandwen is not willing to insert as a part of his exhibit, also to be included, with the understanding that he is not to be bound by it.

The Court: I don't understand that.

Mr. McConaughy: It will be on our responsibility, if we may offer it.

The Court: Offer what?

Mr. McConaughy: I offer it now.

Mr. Brandwen: I will do anything to facilitate matters, but I would say that I object to that offer.

The Court: Sustained.

Mr. McConaughy: Does Your Honor sustain the objection?

The Court: I sustain it at this time, yes.

Mr. McConaughy: All right.

The Court: You may offer it later, yourself.

(Excerpts from minutes of a meeting of the Board of Directors of Missouri Pacific, held in Cleveland on April 12, 1932, were marked by the reporter as Comstock Exhibit 103.) [See Vol. of Exs. p. 160.]

Mr. Brandwen: I now offer in evidence excerpts from minutes of the meeting of Executive Committee of New

Orleans, Texas & Mexico, held in New York on September 20, 1927.

(The exhibit last offered in evidence was marked by the reporter as Comstock Exhibit 104.) [See Vol. of Exs. p. 164.]

Mr. McConaughy: Has Your Honor examined that excerpt?

The Court: I don't know—not as—

Mr. McConaughy: Your Honor, I object to the admission of that in evidence as immaterial and irrelevant.

Mr. Brandwen: It was marked.

Mr. McConaughy: Then I move to strike it out; it is immaterial and irrelevant. It relates to the International-Great Northern adjustment bonds, and what that has to do with the issues framed here, I don't understand.

Mr. Brandwen: I still, Your Honor, am considering the motion made, although there is no objection made to its offer originally. If Your Honor is doing that, then I would like to point out I am offering it. If Your Honor will note that on this excerpt which for the purpose of identification at least it has been marked as Comstock Exhibit 104. So that we will clearly have in mind what you are talking about, there is a statement in these minutes which states that the chairman of the board of the executive committee of the New Orleans, Texas & Mexico, stated that this company, that is, New Orleans, Texas & Mexico, did not have surplus funds to provide for said purchase of the $823,300. International-Great Northern adjustment bonds, but that the Missouri Pacific Railroad Company was prepared to provide the necessary funds there by advancing the same or by purchasing said adjustment mortgage bonds from this company, so that New Orleans, Texas & Mexico was given the choice of doing one or the other, and I think that that has an important bearing on the relations of the two companies.

Mr. McConaughy: I will withdraw the objection.

Mr. Brandwen: Now, if your Honor please, I should

like to offer in evidence excerpts from the minutes of the board of directors of the New Orleans, Texas & Mexico, held in Cleveland on December 13, 1932, as Comstock Exhibit No. 105.

(The document referred to was marked as Comstock Exhibit No. 105.) [See Vol. of Exs. p. 166.]

Mr. Brandwen: I should now like to offer in evidence excerpts of the minutes of March 31, 1933, of the New Orleans, Texas & Mexico, held at Cleveland from the 31st day of March, 1933, as Comstock Exhibit 106.

(The document referred to was marked as Comstock Exhibit No. 106.) [See Vol. of Exs. p. 170.]

Mr. Brandwen: I should now like to offer in evidence a letter from Mr. Safford, to Mr. Baldwin, which I failed to do on Friday afternoon. I have just shown it to counsel.

(The document referred to was marked as Comstock [——] No. 107.) [See Vol. of Exs. p. 172.]

Mr. McConaughy: If the court please, if we can find a copy of this letter there will be no objection. On the other hand if we can't locate the letter we will object to it on the ground it is not dated.

Mr. Brandwen: If your Honor please, I have not any objections to all the efforts that may be made to try to find a copy. Copy of this originally came, so, I am advised from the office of Mr. Baldwin, and I would not like to trouble him about this. Of course, if we can find a copy that shall have the date, I shall prefer it. Now, then, I have a letter of July 1st, and which Mr. Safford represents, is already in evidence.

Mr. McConaughy: We will do our best to see if we can find out something about the date of it.

The Court: It will be admitted subject to correction.

Mr. Brandwen: I should now like to offer in evidence, if your Honor please, a summary prepared for us of the schedule of dividends declared by New Orleans, Texas & Mexico, beginning with January 1, 1925, and offer this subject to correction.

(The document referred to was marked Comstock Exhibit No. 108.) [See Vol. of Exs. p. 173.]

Mr. Brandwen: I now offer in evidence Article V, from the indenture of the first mortgage bond issue of New Orleans, Texas & Mexico, dated April 1, 1924. This is taken from the copy of it as it appears in the record.

Mr. McConaughy: I object to that your Honor as mere duplication; the full mortgage is in the record.

Mr. Brandwen: If your Honor please, I just don't know whether the entire document is going to be considered by your Honor, I simply want to have this excerpt in simply as a convenience.

The Court: The whole document is in there, is it?

Mr. Brandwen: Not in this hearing; the full document is in in the Missouri Pacific proceedings, and you will have this question as to what is in this.

The Court: Very well, it may be admitted.

Mr. Homire: I don't understand, if the Court please: Is this to be admitted—is this excerpt to be admitted? It seems to me that it is improper to receive this particular part of the indenture without the rest of it, and I would like to object to it on the ground this is not admissible without the balance of the indenture. If the rest of the indenture is in evidence there is no need to put this in.

Mr. Brandwen: If your Honor please, if there is any part of the indenture that counsel would like to have inserted because of any relevancy or materiality to this other proceeding I have no objection, but it seems to us that clearly in the interest of keeping the record within reasonable bounds and only dealing with those things that are relevant, that this kind of procedure is [emanently] desirable.

The Court: The objection will be sustained.

Mr. McConaughy: I have no objection whatever to the entire instrument, but I do object to this part being put in the record.

Mr. Kirschbaum: Also urging the same objection; I urge the same objection.

The Court: The Court has already sustained the objection.

Mr. McConaughy: Mr. Brandwen said something else that creates some doubt in my mind. I understand from the—understood from the beginning that the entire record of this proceeding down to date is a part of the record here before this Court. If there is any misunderstanding about that, Mr. Brandwen—

Mr. Brandwen: Yes, there is.

Mr. McConaughy: Let us have that straightened out.

Mr. Brandwen: At the opening, I don't know whether we have a transcript of that, but I would like to read, if we have it, if it has been transcribed, what counsel for the trustee stated on that issue. I think he made a statement at the opening, counsel for the Trustee is not in the room, I would like to read it if it has been transcribed. I think he stated that on last Mohday morning, and perhaps you gentlemen have a transcript of what happened last Monday morning. We have not had that yet, and I understood it was not transcribed, I proceeded in my reaction as to what was before your Honor on the basis of what counsel for the Trustee stated, but since that has not been transcribed, and no one seems to have the statement on that proposition, we might defer this matter until we get that copy of the transcript, if your Honor please. There was no objection at that time to the statement of counsel for Trustee.

(At this point Mr. Dearmont entered the Court Room.)

(To the counsel for the Trustee) There was a question raised as to what is in the record in this proceeding, and I cited to your Honor, in your absence from the court room, that you made a statement last Monday morning on the issue, but we do not have your statement transcribed yet, and I wanted to read what you stated at the session last Monday morning. Now, it is perfectly agreeable to me, if your Honor please, to have counsel for the Trustee state, in view of the fact that we have not a copy of the transcript, restate it as to what he was offering last Monday morning.

Mr. Dearmont: If your Honor please, I am not able at this moment to state my offer possibly in the same words. I know what I had in mind. I offered in evidence in the case the transcript of the proceedings on the plan of reorganization at the Brooklyn hearing in the Interstate Commerce Commission held, I believe, on October 19th, 20th and 21st, 1943, and the record transmitted to this court by the Interstate Commerce Commission in connection therewith and the record before the Interstate Commerce Commission on the original plan hearings transmitted to the court by the Interstate Commerce Commission, which I had in mind included the testimony and the exhibits offered in the earlier hearing which culminated in the plan of January 10, 1940. That is what I had in mind.

Mr. Brandwen: May I ask you this, counsel for the Trustee, whether you did not state last Monday in dealing with the transcript of the material testimony and exhibits submitted to the Commission before the October, 1943 hearings that you stated that you were offering those portions that were pertinent to this hearing?

Mr. Dearmont: I may have so stated. What I had in mind, though, was putting before the court in this matter, but frankly, I had this in mind, that various counsel here represent various interests, and it might be embarrassing to any one counsel to attempt to offer the record before the I. C. C. because some counsel might not want to be bound by all of it, but if counsel for the Trustee is interested in having it all before the court, all that was transmitted on the plan, that was my previous position, to simply offer in this proceeding the record before the Interstate Commerce Commission on the plan, being the testimony [give] there and the exhibits offered and if I did not make it clear in my offering, and I am permitted to do so now, I will renew that offer.

Mr. Kitchel: May it please the court, this is a hearing on the approval of the plan certified to this court by the Interstate Commerce Commission. I say it is very proper that what is in there is offered in evidence, should be offered, and as I go one step further, and say as a matter of law and as a matter of practice, the whole record before

the Interstate Commerce Commission, not only on the hearing in October, 1943, but from the institution of this proceeding that, together with the action taken by this court on the plan, the original plan certified in January, 1940, I think the whole record is before your Honor, and if it is not we will offer it at the proper moment.

Mr. Homire: If the court please, I agree entirely with Mr. Kitchel in his position in this matter. The whole record of the Commission must necessarily be before the court, because it was certified to the court by the Commission at the time the plan was certified, and our position is that that record is before the court. It is not necessary to offer it, but if your Honor should rule differently as to the necessity of it we agree with what Mr. Kitchel says, and we would also offer it at an appropriate time.

Mr. Kirschbaum: We will say with reference to the continued doctrine on which counsel attempted to offer that, it seems to me to be a novel procedure for counsel to say when he is offering a document, "I offer paragraph 5 of that document, because it favors me, and leave out the rest, because I don't want to." But it seems to me that counsel is offering a document in evidence, the whole document has got to go in.

Mr. Brandwen: If your Honor please, your Honor has made a ruling on that offer still in the interest of brevity that I still think is very important. I am simply offering an excerpt from a document and if there is any objection to it the objection has been made. I always proceeded on the assumption if an individual wants to offer an excerpt from a document that is of record, if some one else wants another portion of it, of course, that other portion may be offered and in the interest of any other party. The reason I offered that which I thought was pertinent. There is matter in that document that I have no concern about. I was only concerned about saving time, that is all, so the explanation that I was simply selecting that which is favorable and leaving out anything that was unfavorable is entirely without basis, and it is not worthy of expression. Now, if your Honor please, I must ask your Honor's

indulgence again with respect to arguing this point. We have done what we honestly and sincerely could have done to attempt to get a segregation of the issues involved in the consideration of this very large claim. We tried to point out as clearly as we knew how that it was imperative that this claim be heard separately, because there are so many issues necessarily involved, bearing on the fairness and equity of the plan which can have no possible bearing on the validity or invalidity of the claim asserted against the estate of the New Orleans, Texas & Mexico. It was because we genuinely feared, I might say expected that this kind of position might be taken by certain counsel, and because we felt that under Section 77, it was imperative for your Honor to rule on the validity or invalidity of this claim that we did everything we possibly could to have that segregated. I think I may be permitted to say that this matter was up before the Circuit Court of Appeals, and I made the point to the bench there a week ago Saturday and said if there should be an appeal taken, by whom no one can say, and they may want to present all the material in connection with the plan, Judge Sanborn said, and I am quoting him correctly, he said, "You don't understand our rules; we would not permit such a thing. It would be limited merely to the material bearing on the validity or invalidity of the claim." Now, that was a statement from the bench. It was not included in any opinion or anything else, but it was stated very clearly that that is what their rules require. Now, there can be no question under all the circumstances that that is what is being tried here in substance despite all of these attempts made to encumber it, that is what is being tried here is the validity or invalidity of the claim, and that which has a bearing on the validity or invalidity of the claim, of course, should go in, and material that can, under no circumstances have any relationship thereto, how can there be any basis for that being considered in connection with this specific issue? Certainly we know, your Honor is dealing with a broad problem of fairness and equity of a plan and any issue, or any fact, or any document that has any bearing or relationship that is relevant, in your Honor's opinion to the problem of the benefit of the plan, why, of course, that has to be considered, but for

any one to assume that the issue of the validity or invalidity of the claim moves in precisely the same orbit, has the same beginning and the same end and the same boundaries as has the problem of the fairness or equity of a plan, I think is surely unrealistic, so, of course, if your Honor please, I must renew my objection to the suggestion that in dealing with this problem that has been before your Honor during a good part of last week and this morning that certainly many things are in that record that may be pertinent and have no bearing on the fairness and equity of the plan and can have no possible connection, no matter how far one may stretch one's imagination, and that is why I object to the position taken by counsel who expressed themselves on the subject.

Mr. Kitchel: Your Honor, as I said before, the hearing on the approval of the plan, on the matter I have mentioned, is before the court. When it comes to an appeal, referring to Judge Sanborn, of course, the whole record on appeal, the whole record, that paragraph would not be taken and simply the things bearing on this particular controversy, if the appeal is simply on this controversy. Now, so far as the present situation in this court is concerned, the whole record is before your Honor. Either party may point out in their discussion or in their briefs, such portions of the record as are germane to this case, it is all there for them to point out, and this whole record is here; that is, if this particular controversy were in a separate procedure the whole record would be there, but as I say, the only parts that would be called to the court's attention in connection with this claim, would be those parts dealing with it and the same would hold good in the appeal.

The Court: The court has ruled.

Mr. Brandwen: Then I should like to mark for identification that document, the excerpt which I just attempted to offer.

(Thereupon said excerpt of document was marked for identification as Comstock Exhibit No. 109.) [See Vol. of Exs. p. 174.]

Mr. Kitchel: May I ask if the court ruled on the prop-

osition that the entire record which I have mentioned before the Interstate Commerce Commission and before the court prior to this hearing is in this record?

The Court: Yes.

Mr. Kitchel: Is it of record in this proceeding?

The Court: Yes, I so ruled.

Mr. Brandwen: I take exception to that insofar as they apply to the material and bearing on the controversy dealing with the claim subject to the provision of the N.O.T.M.

Mr. Brandwen: There may be a few more documents to get which would take some five or ten minutes, here, and I just got the books from the counsel for Trustee and I should like to have a few minutes to look at them. I thought perhaps in the circumstance in order not to delay any one your Honor might want to give us a little recess for a few minutes for that purpose.

The Court: After that, what?

Mr. Brandwen: I won't have anything until Mr. Eckert gets the material that he said he was getting together.

The Court: When will that be, do you know?

Mr. Brandwen: Well, I can't say.

The Court: Do you know Mr. Dearmont?

Mr. Dearmont: If that was between Mr. Brandwen and Mr. Eckert this morning, I was not present.

Mr. Brandwen: I asked the question this morning and he said they are getting the material together.

The Court: Can you give us some idea?

Mr. Brandwen: He did not give me any idea, I did not ask him whether today, tomorrow or Wednesday.

Mr. Dearmont: I will be glad to contact Mr. Eckert right now and advise your Honor in about five minutes.

The Court: Yes, I would like to know.

Mr. Dearmont: Just the material that you talked about.

The Court: You will not proceed further?

Mr. Brandwen: This material may take an additional five or ten minutes.

Mr. Kirschbaum: May I inquire of Mr. Brandwen how long further he [tends] to take in the presentation of his material. I understood at the adjournment of court on Friday that he had advised your Honor that he was finished when he presented the exhibits as to certain records he was expecting from Houston, Texas, and he comes in this morning and has taken up the whole morning with additional proof. Now, I think we have a right, after being in court, your Honor being so patient for more than a week to know just when he intends to finish.

The Court: That is what the court is endeavoring to find out.

Mr. Brandwen: If your Honor please, if one would take the pains, if I am not asking too much, to read the record as I stated it for the record last Friday afternoon, I said there was some documentary material I was going to offer and I got that documentary material together so as to save the time, I did it this morning, what I thought would be a very convenient time. Now, with respect to Mr. Eckert's material, I don't think that once I have looked at the books it will take much time at all. I would say that so far as my presentation is concerned, not knowing, of course, what other counsel may offer, I could not make any comment on that, since other counsel have not taken me into their confidence and have not told me what they are going to offer, I cannot make any comment on what may be necessary in answer to that offer. All I say is, so far as the material I am still to offer, that will not take very much time at all.

Mr. Kirschbaum: Then may we conclude, your Honor, that counsel will be finished with his affirmative presentation here this afternoon?

Mr. Brandwen: On that I was wondering when I may have that material from Houston by mail: Mr. Eckert and the counsel for the Trustee is now trying to find out what the state of that material is. How can any one make any such statement.

Mr. Kirschbaum: Mr. Brandwen, that part of the material does not come—that if the trustee does not receive the material, I am sure that does not follow there—I still think we have a right to know when Mr. Brandwen is going to finish here, or we will have to rent the court for the time we have been here.

Mr. Homire: I would like to inquire whether Mr. Brandwen's expressions as to his hopes in finishing his case at an early hour, or date, apply also to the cases which I assume he may be interested in, in connection with objections 20, 21, 22 and 23.

Mr. Brandwen: Those are the Alleghany objections?

Mr. Homire: Yes.

Mr. Brandwen: I will tell you, your Honor, what I wanted with reference to those: When we get to those, I would like to see how much of those we can stipulate in the case of Alleghany, and there is no reason why we cannot stipulate a great deal of that material, and then the amount of proof in my opinion, should be far less than anything that has been offered in connection with this claim.

Mr. Homire: Have steps been taken to prepare the stipulation?

Mr. Brandwen: Steps have not been taken to prepare such stipulation. I wanted to expedite the handling of this inter-company claim, I have centered on that, and when that matter is out of the way we will move along with great dispatch, and I am perfectly willing, if your Honor please, in answer to Mr. Homire's request I am perfectly willing to have counsel for Alleghany as far as possible prepare for the inter-company claim and see for themselves as to what they would prepare to stipulate and let me look at them and it is not asking too much, although I am not asking them to do that, I am simply making this as a suggestion, as they may or may not be willing to do and if they are not willing to do that, I would not complain a bit.

Mr. Leisure: Now, if your Honor please, Mr. Brandwen mentioned a stipulation to me on Friday, and I said I

would be glad to talk to him about it, but there was one thing that I would strenuously oppose and that was any suggestion that would cause this hearing to go over on the theory that we were attempting to arrive at a stipulation, and then finding we could not stipulate and there would be an adjournment, we would have to come back here and try the case later. So I suggested to Mr. Brandwen that we get together over this last Saturday and Sunday and try to do that. Mr. Brandwen did not agree to that. Now, it seems to me that the time for stipulating has passed, and we are down now to the point where we have to start the case and it is too late now to ask the court's indulgence to sit down while we get together and prepare a stipulation.

Mr. Brandwen: We will go on with the case against Alleghany when the inter-company claims are finally concluded.

Mr. Kitchel: Would it be possible to have a five minute recess while the Senator is out looking for those records?

The Court: The court will be in recess for five minutes.

(Five minute recess.)

The Court: You made a statement about the suggestion that you would look up the matter for counsel; what have you heard about this?

Mr. Dearmont: If your Honor please, I was not able to talk to Mr. Eckert; he had just gone out to lunch, but I talked to Mr. Peet, who is familiar with the material that they are attempting to assemble. Mr. Peet said Mr. Eckert would have some of the material ready this afternoon, and some of it that has been asked for on last Friday, we would have some of that ready to present this afternoon. Some that was asked for this morning they could not get ready this afternoon, but would have, they thought most of it, in the morning, although they were not positive that they could get all that had been requested in the morning, and that there were some items that had been requested that they were in doubt whether they would ever be able to produce, because they deal with records that have probably been destroyed, vouchers and some other

matter. That is all the information that I have from Mr. Peet.

Mr. Brandwen: Now, while Senator Dearmont is here I believe I am correct in saying that Mr. Cole has some material brought up from Houston, isn't that correct?

Mr. Dearmont: That is here, if your Honor please; I have that material, and we can produce on that, as we have produced this morning, and I gave to Mr. Atkin, or showed it to him, the Missouri Pacific directors records, meetings of directors and executive committees for the years 1925 and '26. I believe they are in your possession now, and in the court room here, are the original records from 1910 to 1933, of the meetings of the boards and the executive committees, if any, of the St. Louis, Brownsville & Mexico Railway Company, and some records for the Beaumont, [Sauer] Lake & Western, and probably the original minutes of the N. O. T. M. from the time the Missouri Pacific acquired the stock of the N. O. T. M. in 1924, and what purports to be copies of the minutes from 1916 down to that date. I am advised by Mr. Cole that that has been all he has been able to locate anywhere on the Missouri Pacific Lines in the custody of any of the trustee's officers. There was another minute book that was requested for the purpose of seeing the original; we have the copies of—we have the minutes of the meeting that was produced.

Mr. Meyers: That was given to me, Mr. Brandwen, today while you were presenting the case.

Mr. Brandwen: When was that given to you?

Mr. Meyers: This morning.

Mr. Dearmont: Have you got everything you asked for from Mr. Cole?

Mr. Brandwen: Well, I haven't seen what was produced this morning because I was presenting testimony in this matter and I can't say. One thing I would like to ask counsel for the trustee: Mr. Cole was going to make an analysis of the minute book that he testified from the other day as to the executive committee meetings and do

that and get some data, and I don't know whether Mr. Cole is here or whether he made an examination of that book.

Mr. Dearmont: I have not talked to him about it.

Mr. Brandwen: I haven't seen Mr. Cole since that afternoon.

Mr. Dearmont: He was here this morning.

Mr. Brandwen: He was going to get up in a schedule there, and let me see that schedule.

Mr. Dearmont: You are not ready to deal with Mr. Cole then.

Mr. Brandwen: I don't know whether he has it.

The Court: You don't know positively whether you will be ready to go ahead at two o'clock or not?

Mr. Brandwen: I will say this, it would save time if we reconvened a little later than two, so I could look at this matter and then perhaps we can assemble enough to go on for a while. I will say that Mr. Eckert saw all the material Mr. Eckert had.

Mr. McConaughy: I would like, if possible, to get something definite as to when Mr. Brandwen is going to close. If we get these documents from Houston and he sees them, they will suggest something else, and then we can send to Houston for it, and this can go on for weeks. I think it is time we come to the end of this.

Mr. Brandwen: If Your Honor please, so far as my material is concerned, there is no danger so far as I can visualize of this going on for weeks so far as our work is concerned. I want to make that particularly clear. Your Honor has a statement from counsel for trustee as to what this situation is. I think that is as full as can be stated, and I am perfectly willing to sit down with Mr. Eckert between now and the time Court reconvenes, and go over very carefully with him what he has, and I want your Honor to know—

The Court: Do you know how long that will take?

Mr. Brandwen: I don't even know what he has. Now, if I knew what he has, I could be more specific. As I say, so far as I am concerned, I do not plan to take much time, but if, for example, there are certain things that can't be produced, if there are certain vouchers that are no longer in existence, they are no longer in existence and we are not going to fuss about that.

The Court: The court is perfectly willing to continue a little bit later here this afternoon, because James M. Kurn of the Frisco Railroad is being buried at two o'clock and I would like to attend his funeral. I was not going to do it if counsel were all here prepared to go on, out of town counsel, I was not going out there, but if counsel is not ready to go ahead at two o'clock, I will adjourn for an extra hour.

Mr. McConaughy: That will be agreeable to us if you want to make it three thirty; suit your convenience, Judge.

Mr. Brandwen: What will it be?

The Court: We will recess until 3:30.

(Thereupon, the Court declared a recess until 3:30 o'clock p. m.)

Monday, January 15, 1945,
3:30 o'clock P. M.

The Court: You may proceed.

Mr. Brandwen: Mr. Eckert.

MARTIN ECKERT,

a witness of lawful age, having been heretofore duly sworn, upon being recalled to the stand testified further as follows:

Further Direct Examination,

By Mr. Brandwen:

Mr. Brandwen: If your Honor please, I felt that Mr. Eckert has a little stuff and I thought we would take

whatever he has, and he is working on some more material. I thought we would take whatever he has right now.

Q. Mr. Eckert, your duties as Auditor of the New Orlean, Texas & Mexico came under the supervision in 1926 of Mr. F. P. Johnson, the vice-president and Chief Accounting Financial officer of the New Orleans, Texas & Mexico, and Missouri Pacific, with its offices in St. Louis?

A. Yes, sir. I don't know what time it was in 1926. I think he was appointed sometime in 1926.

Q. Now, you prepared a schedule, Mr. Eckert, showing the date of the acquisition of the N. O. T. & M. stock and how that stock was paid for? A. Yes, sir.

Q. Some of that is already in evidence, but since he had it on one schedule, I would like to offer it in evidence.

Mr. Brandwen: I offer this in evidence.

(Said paper was thereupon marked by the reporter as Comstock's Exhibit 110, and received in evidence.) [See Vol. of Exs. p. 177.]

Q. (By Mr. Brandwen) This was prepared by you and under your supervision, wasn't it?

A. Prepared under my supervision—no, I will take that back, it wasn't prepared under my supervision, prepared under the late Mr. Johnson's supervision, and there was a statement we had on hand when you asked for the information, that is why we had it so readily available.

Mr. Brandwen: Do you want to look at it?

Mr. McConaughy: Go ahead.

Mr. Brandwen: I think the schedule just warrants a few questions that I would like to ask Mr. Eckert about.

Q. Mr. Eckert, since this schedule has been prepared, you have had occasion to examine what these red figures are that are indicated in the form of an asterisk on this schedule. Would you please explain what they denote?

A. They denote that the fifteen months, seven per cent notes were converted to the fifteen year, seven per cent notes.

Q. Sinking fund notes? A. Sinking fund notes.

Q. I see. And in the next to the last column the total

that you have here is $15,792,600.00, and you state in the note with respect thereto that the fifteen year, seven per cent sinking fund notes who are called for redemption, and the funds were provided for in part through the sale of 5¼ per cent secured serial gold bonds dated December 1, 1926, in the principal amount of $13,156,000.00. How was the difference between $13,156,000.00 of the secured 5¼ per cent and the $15,792,600.00 of the fifteen year, seven per cent sinking fund notes met? A. Through cash.

Q. Now, Mr. Eckert, am I correct in stating that the material that I have requested and that I requested of you on Friday morning, you have been advised is on its way to St. Louis? A. Some of it, but not all of it.

Q. Not all of it. And some of the material you find that you can complete from material that you have here?

A. Yes, sir, and some of it I find I can't produce because of the regulations of the Interstate Commerce Commission permitting destruction of certain records which I have since learned have been destroyed.

Q. With respect to those records that have been destroyed, quite clearly, there is nothing more than need be done, but you have been advised that pertinent material has already been forwarded to you by air mail?

A. Yes, sir.

Q. And that you are expecting to receive it today?

A. Expecting receipt today, yes, sir.

Q. And there are certain schedules you are working on now that could not be completed in time for the 3:30 session this afternoon? A. That is correct, sir.

Q. Well, that is all I have of Mr. Eckert. If it is agreeable to Mr. Eckert, and if Mr. Eckert doesn't have any obligations of some other nature, I would be delighted to work with you in any of the matters this evening.

A. Off the record, please.

(Discussion off the record.)

Q. The other day, Mr. Eckert, I asked you whether you had the break-up of an account on the asset side of the balance sheet of New Orleans, Texas & Mexico as of December 31, 1932, as you reported it to the Interstate Commerce Commission, which is known as interest and divi-

dends receivable, and since then you prepared a schedule on that? A. I did, sir.

Mr. Brandwen: I offer that in evidence.

(Said paper was thereupon marked by the reporter as Comstock's Exhibit No. 111, and was received in evidence.) [See Vol. of Exs. p. 179.]

The Witness: I will have some other exhibits tomorrow, but I don't think I will be able to produce all of them, as I said a while ago. I will produce what I can. I am making every effort to get them.

Mr. Brandwen: That is all I have of Mr. Eckert.

Mr. McConaughy: I am not prepared to cross-examine Mr. Eckert until Mr. Brandwen finishes his direct.

The Court: You may do so.

Mr. McConaughy: I would like to ask Mr. Eckert one question.

The Court: Just where you are, Mr. Eckert.

Cross Examination,

By Mr. McConaughy:

Q. Mr. Eckert, what was the latest request you received from Mr. Brandwen for information?

A. I received some today.

Q. You received some today. How many documents did he request today? A. Well, he asked for—

Mr. Brandwen: Just as to the number.

A. If I recall, I think it was about four.

Q. (By Mr. McConaughy) Four documents; and didn't he ask for some yesterday?

A. No, sir, I didn't see him yesterday.

Q. Did he ask for any on Saturday?

A. Only what he asked me on the stand.

Q. You weren't on the stand Saturday. A. Friday.

Q. In other words, there weren't any requests between Friday on the stand and this morning?

A. I didn't see him, no, sir.

Q. What is your estimate as to the time it will take to complete the material that you know you can supply?

A. I can't give you a definite answer to that, but I think I will have most of the things he wants tomorrow, sometime tomorrow.

Q. In the morning, or would it be in the afternoon?

A. Probably in the afternoon.

Q. Not until afternoon. Well, now, will you have to deliver some of them on a subsequent day?

A. If they can be gotten, yes, sir.

Q. I am only talking about the material that you can supply. That you know you can supply, when is the earliest that you think you can complete all of the requests made by Mr. Brandwen? I just want your best judgment on it?

A. I think I testified to the effect that some of the information he asked for would take a week, and I have discovered since that, as I stated, under the regulations of the I. C. C. it isn't permissible to destroy certain records, which I learned since have been destroyed.

Q. All right, let's leave those out of consideration.

A. I can't tell you definitely whether I can do everything tomorrow or not until I make a further survey.

Q. All right. That is all.

Redirect Examination,

By Mr. Brandwen:

Q. Isn't it a fact, Mr. Eckert, that material that I asked you for this morning you either have completed already, you already completed, or will be able to complete today. It is all material that is in St. Louis?

Q. You asked me for one statement, Mr. Brandwen, which has to do with interest on the purchases of securities of the Short Lines. I haven't been able to develop anything on that.

Q. As I told you, I thought there was such a schedule in your files, and I think I can indicate where they may be found, and if so I will do that.

A. If I can get the exhibit number it will simplify it greatly.

Q. I will try to get that for you. A. You will?

Q. Yes. That is all.

Recross Examination.

By Mr. McConaughy:

Q. Would you just state for the record what documents you cannot complete tomorrow, and I don't want to get the information about the documents, but the amount of work that is involved in preparing them. I am not speaking of the ones that you think you cannot supply by tomorrow.

Mr. Brandwen: May I suggest that perhaps that question might be deferred until tomorrow, because I may want to take the position, perhaps, with respect to that material, that if it cannot be completed within a very short period of time, I may forego the request for that.

The Court: Well, what difference would that make?

Mr. McConaughy: He objects to his answering the question.

The Court: You object to his answering the question?

Mr. Brandwen: I think it won't be very illuminating or informative.

The Court: You may answer.

A. I stated a while ago I couldn't tell definitely until I went into it a little further. I have got to find out just what we can or what we cannot get with respect to certain of the information he asked for. I will do what I can to get it, but I can't say definitely now whether I can give them to him or not until I make that further investigation.

Mr. McConaughy: All right.

Mr. Brandwen: If your Honor please, I should like to introduce excerpts from the minutes of a meeting of the Board of Directors of New Orleans, Texas & Mexico, held on the 15th day of February, 1917, in the City of New York.

Mr. Kirschbaum: Did I understand counsel to say 1917?

Mr. Brandwen: Yes.

Mr. Kirschbaum: Is that B. C. or A. D.?

The Court: That question, I take it, is asked seriously?

Mr. Kirschbaum: If your Honor please, I object to the offer of counsel unless all the minutes go in. I object to any excerpt going in.

Mr. Brandwen: Well, now, then, do I understand there is no objection to the fact that it is 1917, but the objection is to all the minutes? Now, I simply want to have your Honor look at these after counsel has looked at them to see whether it wouldn't be unnecessarily cluttering up the record with respect to this particular point. I am offering them as of that date for a very special purpose, and that will appear clear from an examination of this resolution.

Mr. Kirschbaum: We already have over a hundred exhibits, your Honor, for a very special purpose.

Mr. Brandwen: For a very special purpose, that is true.

(Said minutes were thereupon marked by the reporter as Defendant Comstock's Exhibit 112, and were received in evidence.) [See Vol. of Exs. p. 180.]

Mr. Brandwen: Now, if your Honor please, I should like to have offered in evidence excerpts from the special meeting of the Board of Directors of the St. Louis, Brownsville & Mexico Railway Company, held in Houston, Texas, on April 29, 1924.

Mr. Kirschbaum: If your Honor please, I make the same objection, that the entire minutes should go in and not just excerpts so that your Honor, if your Honor thinks all of this is material, your Honor should have a complete picture of what was done at the meeting, not just one excerpt that counsel relies on.

Mr. Brandwen: If your Honor please, there are other items there that are not related to what is involved in these proceedings, and it would just needlessly encumber the record.

Mr. Kirschbaum: I am inclined to think, your Honor, that most of what counsel has offered here is needless. I haven't seen the pertinency, and counsel has failed to state the pertinency of any of these minutes.

Mr. Brandwen: I would like the record to show that Mr. Kirschbaum has not looked at any of the exhibits or has not looked at the minutes before he has made his objection, even.

Mr. Kirschbaum: And I think it is unnecessary to do so.

The Court: Mr. Kirschbaum's motion is overruled, his objection, rather.

(Said minutes were thereupon marked by the reporter as Comstock's Exhibit 113, and were received in evidence.) [See Vol. of Exs. p. 181.]

Mr. Brandwen: If your Honor please, I now offer in evidence excerpts from the meeting of June 10, 1924, of St. Louis, Brownsville & Mexico, held at Houston.

Mr. Kirschbaum: Will your Honor please allow my objection along the same lines? I understand counsel is again offering excerpts with regard to a wholly owned subsidiary, that is, excerpts of the minutes. If your Honor will please allow me the same objection as made before?

The Court: Overruled.

(Said minutes were marked by the reporter as Comstock's Exhibit 114, and were received in evidence.) [See Vol. of Exs. p. 183.]

Mr. Brandwen: I now, if your Honor please, would like to offer in evidence excerpts of minutes from the Beaumont, Sour Lake & Western, of the meeting of the Board of Directors held in Houston April 29, 1924.

Mr. Kirschbaum: I make the same objection, if your Honor please, with respect to its being an excerpt and not the entire minutes.

The Court: Overruled.

(Said minutes were marked by the reporter as Comstock's Exhibit 115, and were received in evidence.) [See Vol. of Exs. p. 184.]

Mr. Brandwen: If your Honor please, I now offer in evidence excerpts of the minutes of the Beaumont, Sour

Lake & Western meeting of the Board of Directors of June 10, 1924, held in Houston.

Mr. Kirschbaum: Will your Honor allow me, please, the same objection to reading excerpts into the record?

The Court: Allow you an exception?

Mr. Kirschbaum: I made objection to the evidence. If your Honor has overruled it, I should like an exception.

The Court: Very well, you may have it.

Mr. Kirschbaum: Thank you, sir.

(Said minutes were marked by the reporter as Comstock's Exhibit 116, and were received in evidence.) [See Vol. of Exs. p. 186.]

Mr. Brandwen: I would like to call Mr. Cole now for one or two questions that I will clear up with Mr. Cole.

A. T. Cole,

having been heretofore duly sworn, upon being recalled to the stand, testified further as follows:

Further Direct Examination,

By Mr. Brandwen:

Q. Mr. Cole, the other day when you were on the stand you were asked a question as to whether, I am reading page 336, "Those are the only resolutions (June 19, 1930 and December 6, 1930) dealing with the declaration of dividends by St. Louis, Brownsville & Mexico other than those referred to in the meeting of June 17, 1931, and July 11, 1931, which have already been testified to, is that correct, [in] that correct?"

And you answered, "I will have to check the books to see if that is correct." Since then have you had an opportunity of checking that particular volume?

A. Yes, sir.

Q. And what is the answer?

A. I don't find any more in there.

Q. You also made an examination of all of the executive committee meetings that were held in this volume of St. Louis, [Brownville] & Mexico minutes? A. That is right.

Q. And you prepared a schedule of Executive Committee meetings of St. Louis, Brownsville & Mexico, giving the dates and the place where held? A. Yes.

Q. Is that a schedule that you just prepared? A. Yes.

Mr. McConaughy: Would you state what volume you referred to?

Mr. Brandwen: It is called St. Louis, Brownsville & Mexico, furnished by counsel for the Trustee.

Q. Will you describe this, Mr. Cole? I think it would be better if you described them.

A. That volume contains a copy of minutes of meetings of stockholders, directors and executive committees.

Q. Of St. Louis, Brownsville & Mexico?

A. St. Louis, Brownsville & Mexico, yes, sir.

Q. Between what date?

A. January 7, 1930, is the first, and August 26, 1937, is the last one.

Q. Well, we are not going into that. Now, this schedule of executive Committee meetings was prepared by you?

A. That is right.

Mr. Brandwen: I offer that in evidence.

Mr. McConaughy: I object to that as irrelevant and immaterial.

Mr. Brandwen: I think we want to point out just where the meetings of the executive committee meetings were being held, that is all. They weren't being held in Texas.

The Court: Objection overruled.

(Said paper was thereupon marked by the reporter as Comstock's Exhibit 117, and was received in evidence.) [See Vol. of Exs. p. 188.]

Mr. Brandwen: That is all I have at the moment, if your Honor please.

Mr. McConaughy: No cross examination.

Mr. Brandwen: That is all, if your Honor please, that I have this afternoon.

The Court: What do counsel desire to do?

Mr. McConaughy: Your Honor, I don't care to proceed, if your Honor will permit me, until Mr. Brandwen is ready to say he rests, I want to hear that from him.

Now, your Honor, I think, should put a time limit on his closing. I think that should be done now. The testimony given by Mr. Eckert shows that requests were being made of him as late as this morning for information, and I don't think there is any excuse for that when we consider—

The Court: Have counsel any suggestion just how the Court will determine a time limit?

Mr. McConaughy: I think it would be in order for your Honor to say that Mr. Brandwen shall complete his case by closing time of the morning session tomorrow.

The Court: The Court would hesitate to do that.

Mr. McConaughy: It seems to me when this proceeding was—

The Court: Not only would hesitate, but won't do it.

Mr. McConaughy: All right. May I say a word more on that, your Honor? Your Honor will recall that this proceeding was announced or noticed in October, and Mr. Brandwen has, therefore, been in a position to prepare himself for this trial, and I think what your Honor has observed here is clearly a showing of lack of preparation when he came to trial.

The Court: I think if I did as you suggested, that the Court limit him perhaps to asking that any further exhibits be produced, something of that sort, it might be a different thing, but to tell him that he has to close by a certain time, I would be treading on dangerous ground there.

Mr. Kirschbaum: May I be permitted a word, your Honor. I have observed these proceedings and the patience of your Honor, which I think is without end. It seems to me, though, from what I have observed, that the procedure

of counsel,—of the procedure of counsel, that counsel is attempting to make out an affirmative case out of the lips or out of the mouths of the exhibits of the Missouri Pacific Railroad Company and its various subsidiaries, and I respectfully submit to your Honor, that that is in accordance with what in well known procedure shouldn't be done before trial. Now, certainly he has had all the time to conduct an examination before trial, and to do as counsel has stated before your Honor he intends to do, which is to look over the records and make up his mind what he has got there, what is shown there, to make up his mind whether he intends to offer this, that or the other, he has got a lot of loose little strands and he is trying to draw a picture, if he can draw it, and I say he should start now on his argument. The time taken up of the Court, I think, is away out of proportion to vital matters that your Honor has before him for consideration. We believe that the Plan is objectionable and should and will be thrown out by the Court, but we don't think that this is any proper way to attempt to do it.

Mr. McConaughy: May we have a ruling, then, your Honor, that Mr. Brandwen shall be limited to the exhibits which he has now requested of Mr. Eckert? As I understand it, he has all of the requests complied with, is that correct?

Mr. Brandwen: Yes, I have all my requests complied with.

Mr. McConaughy: All requests for information and material have been supplied to you except that now outstanding on the part of Mr. Eckert?

Mr. Brandwen: Yes, except that which is outstanding.

The Court: What?

Mr. Brandwen: Except that which is outstanding, as you say?

Mr. McConaughy: Well, then, I think, your Honor, we should have a statement from Mr. Brandwen as to what is outstanding now, and that he be limited to that.

Mr. Brandwen: If your Honor please—

Mr. McConaughy: And I move that such an order be made.

Mr. Brandwen: If your Honor please, we have been, with all due respect to the Court, been going through a proceeding where we are dealing with a claim, which on its face purports to be a claim for over ten million dollars, and if interest is allowed thereon, amounts to eighteen million dollars. We have been going on in this case a certain number of days. We think it is a most extraordinary situation that up to this very moment there is no information available as to what the position of the Trustee of Missouri Pacific is with respect to this claim. After all, the Missouri Pacific is being administered by a Trustee, and under your Honor's jurisdiction, and certainly with respect to a claim of this magnitude and this importance, what the position of the Trustee of Missouri Pacific is with respect to this claim is a most important matter, and from all standpoints of ordinary legal procedure, well, established legal procedure, that should have been one of the first things that we all should have been apprised of. We don't even know that at the moment. I didn't say that when I submitted my application to the Court, to have that clarified at the outset and that application was overruled. I went on. Certainly, we have this extraordinary situation where here is a claim asserted by whom I don't know, no evidence yet as to who is asserting this claim. We have a document that has been filed, and certainly, again I say, with all due respect to this Court, certainly under well established principles of procedure and well established principles of law, the burden not only of going forward, but the burden of establishing the validity of that claim and showing what it is made up of and why there is any basis for it, should have been on the party asserting it, but up to the present time none of that has been done. We have, after exception to your Honor's ruling and reserving the exception, gone on with that, taking on a burden, if your Honor please, that we feel that we are under really no obligation as we understand the law, legally to assume, but we have gone on, and it would seem to me that when one considers the procedure that we have pursued in the framework of this whole proceeding, we think, if your Honor please, we have

done more than our share, and it seems to me that if any of these gentlemen wanted to be fair with respect to this, I think that there should have been some kind of recognition of the unusual character of the situation instead, if you will, of being interrupted, being reproved, because we are taking on this additional task and, again, if your Honor please, and again I want to say I have had occasion to examine with a great deal of care the way these intercompany claims have come on for hearing, especially the one that has come on for hearing before the Supreme Court of the United States, and when you consider how much time was devoted thereto, I say, the amount of time we have given to this, the amount of time that has been spent, recognizing, if your Honor please, everything that your Honor has done, I think it is only a very picayunish fraction of the amount of time that has been spent in any of those cases.

The Court: How much more are you going to ask for?

Mr. Brandwen: If your Honor please, I don't at the moment see or think that I shall ask for anything else, but, if your Honor please, before your Honor issues any kind of mandate or any kind of ruling curtailing something, suppose your Honor might feel after looking at some of this material that your Honor would like to know more about some of this material? After all, all we are trying to do is, in view of the extraordinary situation, where nothing has been done by the claimant, we don't know who the claimant is, or whether the claimant wants anything prosecuted, to issue any kind of ruling or mandate with respect to a cut-off or limitation, I simply can't believe that your Honor will want to do that kind of thing, considering all the circumstances.

Mr. Kitchel: In regard to counsel's reference to the Trustee and lack of knowledge of the Trustee's position, this objector has filed an objection to the Plan. His duty is to support his objection. The Trustee, so far as I am able to ascertain, has given him every opportunity to go through the records of this company and ascertain what he wanted to find, and he never started this until the late date which now makes him come in, and instead of pro-

ducing something, fishes around with one witness to find if he can find out something which he would like to inquire on further. I think the criticism of the Trustee is entirely unjustified. The burden is on the objector to sustain his objection.

Now, as to the second point that he makes, that he doesn't know who is asserting this claim and there is no proof in regard to it, this claim was proved before the Interstate Commerce Commission. The record shows absolutely detail as to how the claim is made up. The matter was the subject of long discussion and cross examination before the Commission, and if he wants to know who was asserting the claim, we will say all those who are supporting this Plan assert that claim and take the position that it is already proved, and it is up to the objector to show that the claim is invalid, and the criticism of the Trustee is quite unjustified. I am sorry the Trustee's counsel is not here to defend the Trustee himself.

The Court: The Court is anxious to limit this hearing as much as possible. I think there has been an unnecessary amount of time spent already. Have you any suggestion as to what may be done along that line, Mr. Kitchel? The Court would be glad to hear from you on it.

Mr. Kitchel: I would adopt the Court's suggestion, that is, that he shouldn't be allowed to ask for any more exhibits than he has already asked for. If on tomorrow it proves impossible to obtain some of this material for a week or so, I would suggest that the Court direct that it be omitted because of the delay in securing the matter heretofore.

Mr. Brandwen: If your Honor please, if, as I assume, they are complaining about the time, why can't they go ahead with their case?

The Court: I don't know if they desire to do that.

Mr. Kitchel: Your Honor, we do not care to go ahead with our case until we know what the case against us is.

The Court: You have nothing to offer until tomorrow, then, is that it?

Mr. Brandwen: Nothing more until tomorrow.

The Court: Announce an adjournment until tomorrow morning at ten o'clock.

(At this point the Court announced an adjournment until tomorrow morning, January 16th, A. D. 1945, at ten o'clock A. M., at which time the following proceedings were had, to-wit:)

Met pursuant to adjournment, at 10:00 A. M., Tuesday, January 16, 1945, and the following proceedings were had:

At 10:15 A. M., after the Court had disposed of other matters, the following occurred:

The Court: You may proceed.

Mr. Biggs: If Your Honor please, Mr. Brandwen has been over with Mr. Eckert since about nine o'clock this morning getting the schedules in shape, and expected to be here by now. I think he will be here in a very few minutes.

The Court: Is that this morning or today?

Mr. Biggs: I would assume safely by at least 10:30.

The Court: Have you any further information as to how long it will take?

Mr. Biggs: It depends on Mr. Eckert.

The Court: Announce a brief recess. Notify me as soon as they are here.

(Recess lasting until 10:50 A. M.)

Mr. Brandwen: May it please the Court, I understand that Mr. Thompson, the Trustee, is in the room. I should like to just have him testify for just a minute or two, please.

The Court: Mr. Thompson, will you take the witness stand?

Mr. McConaughy: Your Honor, may I just note for the record that it is now ten minutes of 11:00?

GUY A. THOMPSON,

a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the Objector, Andrew W. Comstock, as follows:

Direct Examination,

By Mr. Brandwen:

Q. Mr. Thompson, I show you Comstock's Exhibit No. 1 for identification, and ask you to look at that, if you please.

(The witness examines the said document.)

A. Yes, sir.

Q. I ask you, Mr. Thompson, as Trustee of the Missouri Pacific Railroad Company, whether you regard the claim presented in Comstock's Exhibit No. 1 for identification as a valid claim.

A. I think so. You are speaking of the form of the claim?

Q. No. I am dealing with the substance of it. Now I am going beyond the form. Now I ask you whether you regard the claim asserted in Comstock's Exhibit No. 1 for identification as a valid claim?

The Court: Let him explain.

Mr. Brandwen: Surely.

A. The Missouri Pacific?

Q. Yes.

A. I think it should be regarded as a valid claim.

Q. Do you regard—

A. (Interrupting) And treated as such.

Q. And do you regard the claim—do you, Trustee of the Missouri Pacific Railroad Company, regard the claim contained in Comstock's Exhibit No. 1 for identification, or identified by Comstock's Exhibit No. 1 for identification, as part of the assets of the estate of Missouri Pacific Railroad?

A. Well, in a sense, it is a part of the assets, yes, but I think it is washed out in the Plan, and would be washed out in any plan.

Q. Well, I would like to ask you for a definite statement, if I can get that from you, Mr. Thompson, please, as to

whether the substance of the claim asserted in Comstock's Exhibit No. 1 for identification constitutes part of the assets of the estate? A. Yes, I should say so.

Q. And that in substance you regard the claim, you, as Trustee of Missouri Pacific, regard the claim asserted in Comstock's Exhibit No. 1 for identification as a valid claim?

A. I have already stated that I think it should be so regarded.

Q. In substance? A. Yes.

Q. I am not dealing with the form, do you understand, with the substance?

A. I understood it. That it should be so regarded and so treated as a valid claim.

Q. As a valid claim. Now, addressing you, Mr. Thompson, as Trustee of the New Orleans, Texas and Mexico Railway: Do you, as Trustee of New Orleans, Texas and Mexico Railway, have any objections to the claim asserted in Comstock's Exhibit No. 1, described in Comstock's Exhibit No. 1 for identification? A. No, sir.

Q. You don't? Thank you. That is all. That is all, Mr. Thompson, so far as I am concerned.

Cross Examination.

By Mr. Kitchel:

Q. Mr. Thompson, have you, during the course of these proceedings, made any examination or caused any examination to be made of the facts in regard to this claim?

A. Yes.

Q. May I ask you what examination you made or caused to be made?

A. Well, I will have to go back to the beginning of the Trusteeship.

Q. Yes.

A. It was in 1933, I believe the month of January, probably, in looking over the papers which Mr. Johnson, then the Chief Accounting Officer, had sent to my office, I ran across, in a paper relating to the assets of the Missouri Improvement Company, a large amount of Missouri Pacific stock and International Great Northern Adjustment

Bonds, which excited my curiosity and surprise, because I had understood that that company was a fully owned subsidiary organized simply for the purpose of taking title in instances where desired to pieces of real property. So I made inquiry concerning it, and was not satisfied with the information I got, and that suggested to me, as I now recall, that there might be other matters of questionable character, and that the best way for me to discover them, if there were, was to have an audit made of the accounts of the Missouri Pacific and the Gulf Coast Lines and the I. G. N. I conferred with Mr. Baldwin about it, who was then my co-trustee, and he acquiesced, and it resulted in my retaining Price, Waterhouse and Company, who have done a great deal of work for me theretofore, and in whom I had great confidence, and still have, to do the work, and they started in on the work. As the work progressed, I would talk to them about different things that appeared, particularly this so-called "stock investment" I mentioned a moment ago—stock and bond investment, and other investments, expenses of different character, one of them called the Van Ness Company expenses, and advancements made to certain shippers, and also these advances made to the N. O. T. & M.

Q. You mean the ones that are now under consideration?

A. The dividends paid. Sir?

Q. You mean the ones that are now under consideration?

A. Yes. And as to this particular claim—or as to the other matters, they were not satisfactory. As to this particular—I mean in the light, in the judgment of Price, Waterhouse and Company, and myself as well. This particular matter—these advancements and dividends, I was advised by Mr. Gray that they seemed to be all right, that no successful attack could be made on those, and I need not worry about those, and I never did.

As to these other matters, they did become the subject of subsequent investigation, and as to some of them, litigation. Well, when the—I think that answers your questions, so far as investigation—

Q. (Interrupting) It does.

A. (Continuing) —to that point is concerned.

Q. Mr. Thompson, when you started your testimony, you said something about January, 1933. That was a little prior to the institution of these proceedings, wasn't it? They were in March? A. 1934, I should have said.

Q. 1934, you should have said?

A. Yes. I became Trustee, July 1, 1933, and it was January, 1934.

Q. Yes.

A. That I should have said. If I said 1933, that was a mistake.

Q. Mr. Thompson, at one time, did you not have a conference with counsel interested in the case with regard to possible irregularities?

The Court: (Addressing the reporter) Read the question.

(The question was repeated by the reporter.)

A. Yes, I did.

Q. Will you tell us about that?

A. I would like to state that, following the completion of the Price, Waterhouse audits of the Missouri Pacific, I. G. N. and Gulf Coast Lines, and when they were filed in this court, I obtained an order of Court, or Mr. Baldwin and I—we were both Trustees at that time—authorizing me or the Trustees to retain Judge Fred L. Williams as Special Counsel for the Trustees, to review these audits and reports, and to advise the Trustees with respect to their duty as to anything disclosed or referred to in those audits. And pursuant to that authorization, we did retain Judge Williams and turned over to him these audits, and he got to work on them. There were certain specific matters that I directed his attention to at the start, among them those that I have already mentioned, and perhaps some others, and, however, not the matter of these advancements, I did not specifically ever call his attention to that, but the stock purchase transactions, the Van Ness Company matter, the purchase of Brownsville, the purchase of stock in some other companies, and loans made to many shippers, and particularly some of those shippers, and other things I don't at the moment recall.

So he proceeded with his investigation. That was in

the fall of 1934, October, as I remember it. On the 29th—or I received while Judge Williams was at work a letter dated January 29, 1935 from Mr. Brandwen suggesting an examination, that there be an examination of the bankrupt under Section 21-A of the Bankruptcy Act; also that Judge Williams investigate the Van Ness account, the circumstances of stock purchases in other companies, this $3,200,000 stock purchase which subsequently became the subject of study, and which I have referred to, and circumstances concerning the purchase, surrounding the purchase of the N. O. T. & M. Railroad. Those were the matters that Mr. Brandwen wrote me at that time he thought should be inquired into. I have his letter here and will be glad, if he desires it, to read it in full, but I am sure I have summarized it correctly. Nothing else.

Q. That is satisfactory with me.

A. That was the 29th of January, 1935. Judge Williams made certain progress with his examination until he was ready to make tentative reports on certain subjects, particularly this so-called "stock purchase," and the circumstances surrounding the purchase of the New Orleans, Texas and Mexico stock, and advancements to shippers. And when it reached that point, meanwhile, I might say that I had been receiving repeated letters from Mr. Brandwen, each expressing the opinion that there should be an examination of the Bankrupt under 21-A. For example, there is one letter of February 2nd to Judge Williams; another of February 11th to Judge Williams; this is the year 1935; one of March 13th to me; another of April 3rd to me; another of June 25th to me; another of July 8th to me; and another of July 17th to me; up to July 8th we had received one, two, three, in addition to the very first letter I mentioned a moment ago, in which Mr. Brandwen set forth what he thought should be the subject of inquiry by me—

Q. (Interrupting) Mr. Thompson, will you identify Mr. Brandwen? You have referred to him as Mr. Brandwen.

A. Mr. Brandwen, who is counsel for Mr. Comstock now.

Q. Yes.

A. I received one, two, three, four, five, six letters up to July 8, 1935, all of them devoted solely to the desira-

bility of an examination of the Bankrupt under 21-A, and after July 8th, two more devoted solely to the same subject. So that when Judge Williams had reached this stage of his investigation, I thought it desirable that we have a meeting of all interested parties, and to that end sent a letter to every mortgage trustee, every bondholders' committee, including their counsel, every stockholders' committee, including their counsel, and to Mr. Brandwen, stating that I would appreciate their coming to such a meeting to consider what Judge Williams would report, and to make suggestions. On the 8th of July—

Q. (Interrupting) 1935?

A. 1935, this meeting was held in my office at the Missouri Pacific Building. There were present at the meeting the counsel representing the First and Refunding Bondholders' Committee, counsel representing the New Orleans, Texas and Mexico, counsel representing the Committee of the Trustee of the N. O. T. & M. Bonds, and counsel representing the Reconstruction Finance Corporation; I am not sure whether the—yes—counsel representing the Trustee and Committee of the St. Louis, Iron Mountain and Southern River and Gulf Division Bonds, and others representing other interests, I am quite sure—those are the ones I recall offhand—and Mr. Brandwen. We had a very nice meeting. Judge Williams did most of the talking, because he was reporting on his investigation. He told of the matters that he had taken up, and the conclusions that he had tentatively reached, discussed this stock matter, which looked very bad, discussed the Van Ness matter, I am quite sure, discussed the purchase of the New Orleans, Texas and Mexico stock by the Missouri Pacific, he discussed the advances to shippers and told how he tentatively had felt about all those matters.

As to the stock purchases—and this, Your Honor, relates to the matter with which you are familiar, which we settled up here recently, where the Missouri Pacific advanced money to—ostensibly to the Transportation Company, and that it bought Missouri Pacific stock and bonds which resulted in the suit in Cleveland. Judge Williams reported on that. At that time he felt that cause of action lay with the Transportation Company, then he changed

his opinion about that later and he thought suit should be brought—thought it was a bad transaction, he felt.

As to the purchase of the Brownsville stock, he felt—the N. O. T. & M. stock, he felt that no cause of action could lie or could be sustained, but that it was a matter that had been approved by the Interstate Commerce Commission, and that as to the commissions that were far—which were quite large, that was a matter of contract that the parties had agreed to, and besides the Statute of Limitations had run, anyway, as I remember it.

And as to the advances to shippers, he did not know whether the Trustee should sue the Directors of the Missouri Pacific or not, because largely a matter of policy. Some of these advancements were substantial, but most of them were, oh, several thousand dollars, and they were manifestly made for traffic reasons, in order to curry favor with the shippers, and that they had resulted in the Missouri Pacific getting, making a good deal more than they had lost, by making these advances; so the question was whether or not I should sue the Directors to recover these advancements that had not been repaid and may never have been intended to be repaid when they were made, and he said that if I did that, that there was a legal question, first, the legal question involved was whether or not the Missouri Pacific had sustained damage; secondly, the practical question as to the Missouri Pacific losing business in the future, as the result of such a suit antagonizing shippers, both the shippers who had received advancements and the shippers who had solicited advancements and been turned down, when they found out that other shippers had gotten advancements, how would they feel about it? Well, he was in grave doubt about that.

The meeting felt—and Mr. Brandwen, in that connection, was the most positive of all; he stated that so far as he and his client were concerned, that he felt that unless there was some fraud, that the situation practically was such that there should be no suits filed.

Then we discussed whether there should be an examination, as Mr. Brandwen had been writing, as I have stated heretofore, and I might say in that connection that I

was in sympathy with Mr. Brandwen's position on this examination under 21-A. I always thought that we should have had it promptly, but Judge Williams did not agree with me. He was my counsel, and he was a better lawyer than I am, as most people will agree, and he just did not want it at that time, he felt the time had not come; but every time I would hear from Mr. Brandwen, I was so much in sympathy with Mr. Brandwen, that I felt I could diplomatically take Mr. Brandwen's letter down to Judge Williams and say:

"Well, now, here is Mr. Brandwen writing again. Better have an examination."

No, he wouldn't have that. So we discussed whether there should be an examination under 21-A, and Mr. Brandwen again expressed himself positively there should be, without delay. Judge Williams felt that there should ultimately be, but he did not believe that there should be at that time, and he was making progress and with his conferences with the counsel for these Cleveland people, and he felt that it would be a mistake to use 21-A at that time. Well, we discussed all those things, and when we had—oh, I then polled those who were there on two questions: first, should this suit be brought immediately against the Cleveland Directors, whether all Directors were to be sued, and whether there should be a 21-A examination at once. Mr. Brandwen voted "aye" on both. Every other person at the meeting, my recollection, stated that he would have to confer with his client and write me, because they were all lawyers who were at the meeting representing either Mortgage Trustees or Bondholders' Committees, and eventually, following the meeting, I did hear from all the others, and as I recall, the upshot of all was that they said they did not feel that they were the ones to determine that. That was the effect of it on them. The result was that Mr. Brandwen was, I think, the only one, I am quite sure he was, who thought that the examination under 21-A should proceed at that time, and as I stated, I agreed with him, personally.

Now, then we had taken all the vote, everything, I then said to those gentlemen there:

"Now, is there anything else that any of you gentlemen knows of or can think of that you think should be the subject of investigation?"

And none had any suggestion to make of any further matter. That was July 8, 1935.

Q. No one mentioned the advances of the—

A. (Interrupting) Never mentioned it, and as far as I know, never thought of by anyone, never mentioned either at the January 8th meeting or at any other meetings, or in any other manner, by any person, until this proceeding—until Mr. Comstock came into the matter—I think he came in last year, I am quite sure, but very recent. He is a very newcomer in this matter.

Then I thought—after that meeting, I thought of—I kept working on this matter, to discover anything else that should be gone into, as well as Judge Williams, and I would review the report again and confer with people up at the Missouri Pacific and get data.

There was one matter that I developed, I thought we ought to go into, and that was what was called the "G. B. Mills matter." It involved an elevator up in St. Joseph, Missouri, where the Missouri Pacific had lost a good deal of money, and I told Judge Williams to go into that. That was one thing that had not attracted his attention.

And then there was, oh, the purchase of this road down in—oh, the Fort Worth Belt—the Fort Worth Belt. I cannot say that I thought there was anything wrong with these matters, but I thought they had just as well be looked into; so I called that to Judge Williams' attention and asked him to look into that.

Then he, himself, following this meeting here, thought that he should go into an investment of the Missouri Improvement Company in the stock Terminal—I cannot figure out my own writing—it is this Terminal Warehouse down—the Little Rock—Mr. Vollmer, what is the name of that?

Mr. Vollmer: That is the Terminal Warehouse.

Mr. Dearmont: Terminal Warehouse.

The Witness: Terminal Warehouse in Little Rock, where

the Missouri Improvement Company had—it seemed, had lost a sum of money, not a great sum of money, on arranging for the Missouri Improvement Company to lend money to this Terminal Warehouse, and had also invested fifteen hundred dollars in bonds of that Warehouse. I might say, as things have turned out, it proved to be a profitable thing rather than a loss, and in this way: that the Improvement Company took stock which was then perhaps worthless, of the Warehouse Company, as security for this loan, and now they are trying to get the stock back at a very—at least the amount of the loan with interest, and I think there is substantial profit, but at that time it did not look that way, and that was another thing that Judge Williams went into.

Well, we milked the matter dry, as far as we could tell, and as far as people had suggested anything to us, so I then came into court with a motion 453, in which I represented to the Court that by Subdivision (c) of Section 77 of the Act relating to bankruptcy, it is provided that the Judge shall direct the Trustee or Trustees and may request the Commission through such of its agencies as it may designate to report to him any facts pertaining to irregularities, fraud, misconduct, or mismanagement, and so forth, and I stated to the Court that I had done the best I could to learn of all irregularities, fraud, and misconduct, and that the only ones that I had been able to locate were those which were the subject of Judge Williams' various opinions which were filed in this case, and then stated that whether the Interstate Commerce Commission is in possession of facts pertaining to irregularities, fraud, and so on, I did not know, the Trustee is not now advised, but suggests that if any such information is available to the Commission, it should be brought to the Trustee's attention, all such information should be made available without delay, to the end that no bar of limitations may intervene. Wherefore, I asked the advice of the Court. That was on March 2, 1936. And the Court entered an order on that application providing that copy of Trustee's motion, together with copy of its letter, be transmitted to the Interstate Commerce Commission, and that this order shall be considered as a formal request

upon the Commission for facts, if any, now in the possession of the Commission, pertaining to irregularities, fraud, misconduct, or mismanagement, as a consequence of which the Debtors or, rather, any of them, may have a cause of action arising therefrom against any person or corporation, other than facts relating to the subject matters of the reports of the Special Counsel, Fred L. Williams, and of the so-called "Terminal Shares Contracts" more fully described in Trustee's motion. That order was entered on the 2nd of March, 1936, and was sent to the Interstate Commerce Commission. I did not know what I should do. I had done the best I could, had done everything I could think of, to find out whether there were irregularities, and asked all counsel to help me, to tell me if they knew of anything. Then I called on the Court and sent this to the Commission. That was just the end of it.

Q. No reply from the Commission in regard to these matters? A. No, sir, there was not.

Q. Mr. Thompson, earlier in your testimony you referred to a Mr. Gray. Will you identify him a little further?

A. Why, he is the senior partner of Price, Waterhouse, being in charge of their office in St. Louis.

Q. And he was the one that had charge of this examination?

A. And the one with whom I made the arrangement, or with whom I conferred as the work progressed.

Q. You mentioned the fact that Mr. Comstock was a rather late comer in these proceedings. Did you receive a letter from Mr. William H. Biggs, his attorney, sometime in October, 1943, I think?

A. Yes, sir. Well, I received letters from Mr. Biggs prior to that.

Q. In regard to this claim? A. No. No, no.

Q. Not in regard to this claim?

A. No. When Mr. Biggs first came into the matter, it was in connection with the payment of—my motions for payment of interest, and his position, or Mr. Quisenberry's—Mr. Quisenberry is, well, their position. In fact, I did not know at that time—I don't think I knew Mr.

Comstock, but my—I see the first letter I have here from Mr. Biggs is August 4, 1943. I am sure that I had known of Mr. Biggs' connection with this prior to that time, because Mr. Quisenberry appeared here in court. It must have been October or November, 1941, because here is a copy of a letter he wrote to Judge Moore, and which he sent to me.

Q. Mr. Quisenberry? A. Yes.

Q. Or Mr. Biggs?

A. Making reference, thanking the Court for the Court's courtesy in permitting Mr. Quisenberry to address the Court from out in the audience there on some matters, and Mr. Quisenberry sent me a copy of the letter. That was in 1941, October, and shortly after that I knew that Mr. Biggs was representing Mr. Quisenberry, but there was nothing about—what they were talking about was paying off, buying in bonds, buying bonds and not paying interest, and when the vote was taken, and I think that was probably when Mr. Quisenberry first appeared, he thought that I should send out to all of the bondholders a letter or a statement of some kind coming from me, personally, as Trustee, so it was those things that were discussed, and then a little later the question of the annual stockholders' meeting of the Missouri Pacific. I know Mr. Quisenberry thought that I should pay for his getting out notices of the meeting, proxies, and things like that. He took that up with me.

Q. In that connection, did Mr. Biggs act as Mr. Quisenberry's counsel?

A. At some stage, Mr. Biggs came in as Mr. Quisenberry's counsel, but it was in 1943—August 4, 1943, Mr. Biggs wrote me.

Mr. Dearmont: August 2nd, isn't it?

A. August 4th. Well, that was about buying bonds. I was coming down, by-passed that. He was representing, as I understood it, Mr. Quisenberry at that time.

Q. Just a moment. May I ask you just this one question on this: Who is Mr. Quisenberry?

A. Well, sir, he is seated in the court room. That is about all I know, except that I have had some confer-

ences with him. I do not know what his business is or anything about Mr. Quisenberry.

Q. Did he disclose what interest, if any, he had in the case?

A. He told me he was interested, but what it was, I cannot recall.

Q. Well, if you will go along with your letters.

A. I don't believe that I knew that Mr. Biggs represented Mr. Comstock until the fall of 1943. I have here a letter from Mr. Biggs dated October 2, 1943, which I will read, if you care to hear it.

Q. Will you read it?

A. (Reading:) This letter is addressed to you in your capacity as Trustee of the N. O. T. & M. Railway Company. As you know, we represent Mr. Andrew W. Comstock and other owners and holders of secured serial 5¼ gold bonds of the Missouri Pacific Railroad Company totaling a million, two hundred fifty thousand dollars. Also there is deposited as collateral to secure each of such one thousand bonds ten shares of the capital stock of the said Texas, New Orleans and Mexico Railroad Company. There has been filed with the District Court, and with you in your capacity as said Trustee, claims of the Missouri Pacific Railroad Company in the approximate amount of ten million dollars, which together with interest accrued, according to your book, totalled on January 1, 1943, $15,986,895.34. It is our position that said claims as filed are invalid, and we respectfully request that you, as Trustee, take the necessary and appropriate steps to see that same are rejected and stricken from the record of this bankruptcy proceeding. Your prompt response hereto, indicating what action you propose to take in the premises, will be appreciated.

That letter—I was out of the City when that letter came, because I see it was acknowledged—its receipt—by Senator Dearmont, on October 4th. And when I got back to St. Louis on October 22nd, I have a notation on here addressed to Senator Dearmont:

"Senator: Please advise. G. A. T."

Q. Did you ever make any reply to that letter, Mr. Thompson, personally?

A. I never did, but Senator Dearmont, I understand, did verbally. He talked to Mr. Biggs.

Q. Will you excuse me a minute? Mr. Biggs, to whom you refer, is counsel here? A. Sir?

Q. Mr. Biggs is the counsel who is present here?

A. Yes, sir.

Q. And representing Mr. Comstock. That is all, I think, Your Honor.

A. I would like to supplement, since I have mentioned that Mr. Brandwen wrote me repeatedly, insisting on 21-A examination, that in the meeting that I recall was here July 8, 1935, and I have stated that Judge Williams thought the examination should not be held at that time, but should be before—but should at some time later; that I got an order of Court, with Judge Williams' approval, finally, in November, 1935, for an examination under 21-A, and there were extensive examinations conducted in Cleveland on November 20, 21, and 22, and in St. Louis, the 28th and 29th, I believe, of November. At any rate, a few days later, maybe a week later. I filed petition in court for leave to make that examination, and got an order of Court authorizing the examination under 21-A. Copies were sent, of course, as usual, to all parties in interest, including Mr. Brandwen, and many of the parties in interest appeared in Cleveland when the examination was had, but Mr. Brandwen did not appear. I mention that because I was surprised that he did not come.

Q. Mr. Thompson, at the time that you now refer to, this conference, do you know whom Mr. Brandwen represented?

A. At the time of the conference on July 8, 1935, I think he represented the Beard Committee.

Q. I didn't—don't want to have any misunderstanding that I was insinuating that he was at that time representing Mr. Comstock.

A. No. He represented the Beard Committee. Doctor Beard, the great historian.

Redirect Examination,

By Mr. Brandwen:

Q. There is only one question I would like to ask, Mr. Thompson, and that is this: In response to one of the

questions put to you by Mr. Kitchel, I believe you stated that sometime after you assumed your duties as Trustee, I believe you were then one of the two co-trustees, you arranged for an audit of the books by Price, Waterhouse, correct? A. Yes, sir.

Q. Am I not correct in my recollection that the audit furnished you by Price, Waterhouse with respect to the financial situation of these various roads prior to the institution of the 77 proceedings was a consolidated audit of all the companies?

A. Yes, to this extent: my recollection is that the first audit that was furnished here by Price, Waterhouse was a consolidated audit, and I told them that I did not—that I wanted separate audits, and they were furnished.

Q. And were those separate audits disclosed to various groups? A. Oh, yes, sir.

Q. Have you ever seen them?

A. Yes, sir. Haven't you received that?

Q. I have never seen a separate audit. The only audit I have ever seen is consolidated audit. That is the reason that I asked you that question.

A. I am surprised you did not receive them, because they were furnished.

Q. Separate audits?

A. Separate audits. And filed in court, and that we sent to everybody. They were planographed and mailed to everybody of interest.

Q. In a consolidated audit, of course there would be no information about any advances? A. Oh, yes.

Q. In a consolidated audit? A. Oh, yes, I think so.

Q. In Missouri Pacific as well as N. O. T. & M.?

A. I think so, as well as any other dividends in the consolidated audit. I am surprised to hear you did not get the copy.

Q. No. A. Well, did you get the subsequent audits?

Q. They were monthly and annual audits, yes.

A. The annual.

Q. The audits I am referring to are the separate audits.

A. Well, you should have received that. I don't know why you didn't.

Q. I just wanted to know if that was not correct, if all that was submitted at that time was consolidated, that was all. A. You did get the consolidated?

Q. The consolidated.

A. Then you should have received those, because they were filed here in this court, and were planographed and sent to every one, as far as interested.

Q. All right, sir.

Recross Examination,

By Mr. Kitchel:

Q. The Beard Committee which you mentioned a moment ago represented or held, did it not, Missouri Pacific First and Refunding Mortgage Bonds? A. I don't know, sir.

Q. I think the record so shows. A. I don't know.

Mr. Kitchel: That is all, Your Honor.

MARTIN ECKERT,

a witness of lawful age, having been heretofore duly sworn, upon being recalled to the stand testified further as follows:

Direct Examination Resumed by Mr. Brandwen:

Q. Mr. Eckert, in connection with the testimony that you have been giving you have had prepared under your supervision a detail of St. Louis, Brownsville and Mexico Railway Company vouchers in favor of New Orleans, Texas & Mexico, outstanding as of December 31, 1932, have you not? A. Yes.

Q. And that is sometimes also described as family line bills? A. Yes.

Mr. Brandwen: I offer this in evidence.

(The document last offered in evidence was marked by the reporter as Comstock Exhibit 118.) [See Vol. of Exs. p. 189.]

Mr. Brandwen: Would Your Honor like to look at this (handing exhibit to the Court)?

Q. Mr. Eckert, with respect to this schedule, these vouchers were outstanding and unpaid as of December 31, 1932; that is correct, is it not? A. That is correct.

Q. You have a category described as "joint expenses": Am I correct in understanding that in that category you have items covering maintenance of way, maintenance of equipment charges, proportion of traffic expense, proportion of general expense, and similar items?

A. Yes. Those items are taken from what we call a pooled bill.

Q. A what? A. A pooled, p-o-o-l-e-d, bill.

Q. I ask you, Mr. Eckert, whether you didn't prepare a comparable schedule of vouchers and family line bills, running from Beaumont, Sour Lake and Western in favor of New Orleans, Texas & Mexico, outstanding and unpaid as of December 31, 1932. A. Yes, sir.

Mr. Brandwen: I offer this in evidence (handing document to the Court).

(The schedule last offered in evidence was marked by the reporter as Comstock Exhibit 119.) [See Vol. of Exs. p. 191.]

Q. Mr. Eckert, there is a category that appears on Exhibit 119, also, designated as "joint expense" and a description of the composition of the items contained within the category of "joint expenses", the same as that which has been described with respect to that category in schedule Exhibit 118?

A. Relatively the same, except as to the line on which the expenses were incurred.

Q. Mr. Eckert, I show you a schedule showing the various bond issues that have been put out by New Orleans, Texas & Mexico, beginning with 1924, with some explanatory comments, and ask you whether that has been checked by you.

A. Yes, it has been checked and some information with respect to the purpose of issue shown by us on the right-hand side of the statement.

Q. It is correct, is it not? A. It is correct, yes, sir.

Mr. Brandwen (to opposing counsel): I am very sorry I tore this out just a moment ago, after it was photostated.

The Court: What is this?

Mr. Brandwen: Schedule of the bond issues put out by New Orleans, Texas & Mexico, beginning with 1924 and covering those after New Orleans, Texas & Mexico was owned by Missouri Pacific.

The Witness: Off the record.

(At this point the witness made a statement to counsel off the record.)

(The schedule last offered in evidence was marked by the reporter as Comstock Exhibit 120.) [See Vol. of Exs. p. 193.]

Mr. Brandwen: Now, Mr. Eckert, you prepared another schedule, did you not, showing the manner in which the various dividends declared by St. Louis, Brownsville and Mexico, in favor of New Orleans, Texas & Mexico, were paid? A. Yes, sir.

Q. Is this the schedule which you prepared (indicating)? A. Yes, sir.

Mr. Brandwen: I offer this in evidence.

(The schedule last offered in evidence was marked by the reporter as Comstock Exhibit 121.) [See Vol. of Exs. p. 194.]

Mr. Brandwen: Q. Mr. Eckert, with respect to Comstock Exhibit 121, this is exclusive of the dividends that were recorded on the books of the St. Louis, Brownsville and Mexico as still unpaid as of December 31, 1932?

A. That is correct.

Q. Mr. Eckert, you also prepared a statement showing the cash balance and current assets and current liabilities of St. Louis, Brownsville and Mexico, as of June 30, 1931, and July 31, 1931, did you not? A. Yes.

Q. And this is it (indicating)? A. That is correct.

Mr. Brandwen: I offer this in evidence.

(The statement last offered in evidence was marked by the reporter as Comstock Exhibit 122.) [See Vol. of Exs. p. 194.]

Mr. Brandwen: Q. Mr. Eckert, coming back to Comstock

Exhibit 121, which deals with dividends from St. Louis, Brownsville and Mexico to New Orleans, Texas & Mexico, you have a series of items which you describe as paid by even offset: Please explain that.

A. Well, I will explain that by saying if the N. O. T. & M. owed the St. L. B. & Mexico $100,000. and the St. Louis, B. & M. owed the N. O. T. & M. a like amount, an even offset would be made, which would mean that it would be almost identical to a cash transaction.

Q. I show you this analysis of profit and loss, New Orleans, Texas & Mexico, and ask you whether that is not correct. A. As prepared from the records, yes, it is correct.

Q. As prepared from the records submitted by the New Orleans, Texas & Mexico to the Interstate Commerce Commission on the various years? A. That is correct.

Mr. McConaughy: Do you have an extra copy, Mr. Eckert?

The Witness: I only have one here.

Mr. Brandwen: I offer that in evidence.

(The analysis last offered in evidence was marked by the reporter as Comstock Exhibit 123.) [See Vol. of Exs. p. 195.]

Mr. Brandwen: I should like to offer in evidence the following item from the Annual Report of the St. Louis, Brownsville and Mexico Railway Company, submitted to the Interstate Commerce Commission for the year ended December 31, 1924. I am reading from Item 396 on page 323. It is under the caption "Miscellaneous Items" in the profit and loss account for the year: "Interest on St. L. B. & M. Railway Company First Mortgage Gold Bonds $2,548,916.40" and the statement immediately below "(See note)".

Below that, on the same page, is the following: "Note line 26. This item represents interest on First Mortgage Gold Bonds from July 1, 1912 to May 31, 1916, previously written off to profit and loss. Payment of this interest was authorized by the Board of Directors of the company at meeting held April 29, 1924."

Q. Mr. Eckert, I show you this document and ask you whether that is not a true copy of what appears in the report submitted by the New Orleans, Texas & Mexico to the Interstate Commerce Commission for the year ending December 31, 1924. A. I didn't check that.

Q. May that be offered, subject to your check?

Mr. Brandwen (to Mr. McConaughy): I don't believe that volume is here. It is being used in the Missouri Pacific office at the moment.

Mr. McConaughy (to the witness): This was not prepared by you?

The Witness: I did not prepare it, no. I would have to verify it. I could verify it if I had the record.

Mr. McConaughy: Does this purport to be a copy, Mr. Brandwen, or is it an analysis?

Mr. Brandwen: I understand there is no figure in there that is not on that page.

Mr. McConaughy: It is copied from the report?

Mr. Brandwen: So I understand. I am going to offer another one—

Mr. McConaughy: Have you a copy of this?

Mr. Brandwen: I don't have a copy of this.

(The document last submitted to the witness was marked by the reporter as Comstock Exhibit 124.) [See Vol. of Exs. p. 197.]

Mr. Brandwen: Q. Mr. Eckert, I show you this document, which purports to be a transcript of items that appear in the New Orleans, Texas & Mexico Railway reports to the Interstate Commerce Commission for the year 1924, dealing with items on page 323, and ask you whether that accords with your recollection.

A. Yes; I remember those amounts representing interest payments received on the First Mortgage bonds of St. L. and B. S. & W. Railway Company, if that is what you refer to. I have to verify the rest of the statement.

Q. If my recollection doesn't fail me, I think you testi-

fied with respect to these items the other day, when you had the books before you. A. I did.

Mr. Brandwen: And I didn't offer that in evidence at that time.

I offer this in evidence.

(The document last offered in evidence was marked by the reporter as Comstock Exhibit 125.) [See Vol. of Exs. p. 198.]

Mr. McConaughy: Was Comstock Exhibit 125 prepared by you, or under your supervision?

The Witness: It was not.

Mr. McConaughy: Mr. Brandwen, with respect to Exhibit 125, what is the significance of the pencil line drawn around one of those figures?

Mr. Brandwen: The significance of that is that that is a debit item instead of a miscellaneous credit. That was explained by Mr. Eckert in his testimony the other day.

Q. That was explained by you?

Mr. McConaughy: You understand that, Mr. Eckert?

The Witness: Yes, I understand that. I discussed that the other day. I was a little—I floundered around a little on the interest payment, but I since developed the payment as authorized by the Board of Directors. I think that is what Mr. Brandwen had in mind. Those amounts have also been paid.

Mr. Brandwen: Q. All Mr. McConaughy asked was the significance of the circle around the figure $98,715.94, which appears in Exhibit 125, and I stated to Mr. McConaughy since it is circled under the category of "Miscellaneous Credits", that is a debit, as you testified the other day. A. That is the red figure, yes.

Mr. Brandwen: Perhaps it may be better to have that typed out (indicating exhibit which was being examined by the Court).

The Court: It will be a lot easier to read.

Mr. Brandwen: Suppose we have them typed out. Would Your Honor like me to read them, without them going on the record now, so it may help, or would you rather wait until they are typed out?

The Court: Very well.

Mr. Brandwen: We will have them typed out, and simplify that.

Q. Mr. Eckert, do you have any material with you which would enable you to check the dividend and interest income received by the New Orleans, Texas & Mexico from January 1, 1925, to December 31, 1932, from the various subsidiary companies? There has already been testimony on the totals, and I simply want to have it broken up, for the convenience of the Court and the record.

A. I don't think I have that material with me.

Mr. Brandwen: May I offer this in evidence, subject to check?

(The document indicated by counsel was by the reporter marked as Comstock Exhibit 126.) [See Vol. of Exs. p. 199.]

Mr. McConaughy: Mr. Eckert, Comstock Exhibit 126 was not prepared by you, or under your supervision; is that correct?

A. It was not prepared by me or under my supervision.

Mr. Brandwen: Q. Mr. Eckert, I have here a schedule showing the investment by New Orleans, Texas & Mexico in affiliated companies, as reported by New Orleans, Texas & Mexico to the Interstate Commerce Commission for the various years, giving details. Do you have any material with you at the moment that will enable you to check the accuracy of these figures? A. I have not.

Mr. Brandwen: May I offer it subject to check? I thought that Mr. Eckert might check these things during the noon recess.

(The schedule last identified was marked by the reporter as Comstock Exhibit 127.) [See Vol. of Exs. p. 201.]

Mr. McConaughy: Mr. Eckert, was Comstock Exhibit 127 prepared by you, or under your supervision?

The Witness: It was not.

Mr. McConaughy: Did you ever see this before?

The Witness: No.

Mr. McConaughy: Mr. Brandwen didn't discuss it with you at all?

The Witness: No, sir.

Mr. Brandwen: If Your Honor please, may this record be regarded as including Exhibits 455 and 456 in the proceeding before the Interstate Commerce Commission?

Mr. McConaughy: There is no question about that, Your Honor. That was settled yesterday.

The Court: Very well.

Mr. Brandwen: Now, if Your Honor please, Mr. Eckert's assistant was working on a schedule which I thought would be here at this time.

Q. It is not here yet? A. No, sir.

Mr. Brandwen: I don't think it will take long, but it certainly should be here any minute.

Now, I want to offer in evidence two companion schedules that I have here.

I have one sheet in my own handwriting, which I would like him to see, with respect to dates of dividends by the St. Louis, Brownsville and Mexico, and I thought I would offer them all at one time.

The Court: Then you will be through?

Mr. Brandwen: Then, with some maps, so far as my notes are concerned—there is just an excerpt from minutes of one meeting, and I am through.

The Court: Shall we take a recess until two o'clock to get that?

Mr. Bailiff, announce a recess until two o'clock.

Mr. Biggs: If your Honor please, Mr. Brandwen and Mr. Eckert are checking those exhibits that were introduced this morning.

The Court: How long is he going to be checking them, Mr. Biggs, do you know?

Mr. Biggs: If you want me to venture in the field of prophecy, it will take 15 minutes.

The Court: Then, do you promise you are through?

Mr. Biggs: I don't think it will take us over 10 minutes to finish.

The Court: Announce a brief recess and notify me when you are ready.

(Brief recess)

Mr. Brandwen: Mr. Eckert, please.

MARTIN ECKERT,

having been heretofore duly sworn, being recalled to the stand, testified further as follows:

Direct Examination (Continued)

By Mr. Brandwen:

Q. Mr. Eckert, at this morning's session I introduced into evidence Comstock's Exhibit 124, and I have asked you to check that, and will you please look at it and tell me whether that is correct?

A. That is correct, except in the third line reference is made to profit on equipment sold, $163,451.30. That should read, "Profit on Road and Equipment sold". That is the only correction I find.

Q. Otherwise, it conforms exactly with the items in the report submitted to the Interstate Commerce Commission?

A. Substantially so. The wording isn't exactly the same, but as to the figures it is the same.

Q. When this was checked at your office, someone in your office wrote the word "Road and" on the face of the exhibit? A. Yes, sir, I did that myself.

Q. Oh, that is your own writing? A. Yes.

Q. Now, this morning there was offered in evidence Comstock Exhibit No. 125, which also purported to be transcript from the report submitted to the Interstate Commerce Commission by New Orleans, Texas & Mexico. Since that time you have had an opportunity of checking that and will you please state what you have discovered with respect to that?

A. I discovered there were certain items shown in the annual report to the Interstate Commerce Commission which are not intelligently reflected on this statement, more particularly the items of $74,359.56, which is shown on the exhibit as difference between par value and cost of first mortage 6% bonds reacquired and retired. This should be shown as it was shown on this statement here as the difference between the par value and cost of 6% bonds reacquired and retired, $21,759.66, plus 5% premium on $1,052,000 equipment prior lien certificates, $52,600, making a total of $74,359.56. In order that there wouldn't be any misunderstanding about this exhibit as submitted, I thought it would be best to copy right from the page of the annual report to the Interstate Commerce Commission the data as shown on that report, and also that the memorandum relating to the income profit and loss account should be shown thereon, which has been done. I would suggest that this be substituted, if it can be done for the other exhibit.

Mr. Brandwen: That is perfectly agreeable to me.

Mr. McConaughy: Agreeable to us.

Mr. Brandwen: If counsel is willing to do that. Then, we will have this numbered Comstock Exhibit 125. Have you got another copy, Mr. Eckert?

A. I will see whether I have. Yes.

Q. The substitution has just been made, Mr. Eckert. The figures are not different in any way at all in the revised Comstock Exhibit 125, the total figures from that which appeared in the exhibit offered this morning?

A. They are no different.

Q. Mr. Eckert, there was offered this morning Comstock Exhibit 126. You had an opportunity of checking that since it was offered. Will you state what the result of your examination is with respect to that exhibit?

A. That exhibit was examined and was found correct.

Q. There was also offered in evidence this morning Comstock Exhibit 127, and you have had an opportunity of checking that also?

A. Yes, sir, I had an opportunity of checking that and found that correct.

Q. Thank you. Mr. Eckert, there was offered this morning Exhibit 120, and you had an opportunity of examining that since it was offered. I ask you what comment you have to make as a result of your examination?

A. The exhibit as submitted we thought purported to show what the outstanding bonds were at the end of 1928. This, however, is not the—apparently was not the wish of the party who prepared it, and it was intended to show, the first three lines, the amount of bonds outstanding, as of December 31, 1943. That would mean that the way that the exhibit was submitted, it wouldn't make the total of $42,970,000, so that the item in the sixth column of the statement, the third line from the top, should read: $14,345,900 instead of $13,676,300. By making that change you bring out the total of $42,970,000 in the last column as a total of the funded debt, third line, last column.

Q. Any other item that should be commented on in order to bring the footings back into reconciliation?

A. Well, I don't remember now.

Q. Well, if you have covered them all, that is all right.

A. Yes, I think that is all.

Q. Just look at that, won't you, please? It is just a matter of addition, that is all. I want to be sure that the footing is correct, that is all. Will you just add that, Mr. Eckert? I want to be sure that the footing is correct. We won't examine the exhibit.

A. Well, the footing as shown in the fifth column—

Mr. McConaughy: What figure are you talking about, Mr. Eckert, in the fifth column?

A. Fifth column, third line, first, second and third lines. Let me see how that foots, just a minute. The first item on the fifth line, I mean the first item on the first line in the fifth column should read $10,164,900.00. The next item is the same as it now reads, $981,000. The next item, $3,200,000, that would bring out the total of $14,345,900 as of December 31, 1943.

Mr. Brandwen: May that correction be noted on that exhibit to simplify matters?

Mr. McConaughy: All right. Why not let's just note it right now.

Mr. Brandwen: Yes, it will be simpler. Then, when we have it photostated we can have the corrected one photostated.

Mr. McConaughy: It would be very confusing. The exhibit itself ought to be corrected.

Mr. Brandwen: Would you make these changes on here, Mr. Eckert?

A. I wonder if it wouldn't be simpler to prepare a new exhibit?

Q. That is perfectly all right.

Mr. McConaughy: It is too hard to read if it is photostated. Can't you let Mr. Eckert make it up?

Mr. Brandwen: That is perfectly agreeable. Let Mr. Eckert make it up.

Mr. McConaughy: We will all get enough copies then.

Mr. Brandwen: You have another task, Mr. Eckert.

Mr. McConaughy: That is a mere mechanical job, is it, Mr. Brandwen?

Mr. Brandwen: Yes, that is all it is.

Q. Now, Mr. Eckert, I show you three sheets of a document that you prepared dealing with the family line bills of St. Louis, Brownsville & Mexico, as of April 1, 1933. I offer that in evidence. You prepared it, or under your supervision. A. At my office under my supervision.

(Said paper was thereupon marked by the Reporter as Comstock Exhibit 128 and was received in evidence.) [See Vol. of Exs. p. 202.]

Q. Mr. Eckert, turning to Exhibit 128, in the column headed: "Unpaid as of April 1, 1933," there are certain items that are left blank for which there is no figure given. Am I correct in understanding that you intend

thereby to indicate that those vouchers audited for those respective months have been fully paid? A. Yes.

Q. And am I to understand from this exhibit that, for example, in May, 1928, which is the first unpaid voucher, the vouchers audited for the month amounted to $335,834.44, but the amounts unpaid as of April 1, 1933, were $103,587.57; are we to understand therefrom that the difference between the amount of vouchers audited and the amount unpaid as of April 1, 1933, was paid? A. Yes, sir

Q. And that will explain the various other items throughout this exhibit 128?

A. That is correct, yes, sir.

Q. Now, Mr. Eckert, I show you the document in three sheets, which I understand was prepared under your supervision dealing with family line bills of Beaumont, Sour Lake & Western; that is correct, is it not?

A. That is correct, sir.

Q. And that exhibit shows the family line bills of Beaumont, Sour Lake & Western, that were unpaid as of April 1, 1933? A. That is correct.

Mr. Brandwen: I offer that in evidence.

(Said paper was marked by the Reporter as Comstock Exhibit 129, and was received in evidence.) [See Vol. of Exs. p. 204.]

Q. (By Mr. Brandwen) Mr. Eckert, here now in the Exhibit 129, there is a column headed: "Unpaid as of April 1, 1933," and there are blank spaces in certain places here. Are we to understand thereby that it means that the vouchers audited for the respective months as of which there are blank spaces, were paid?

A. That is correct, sir.

Q. And similarly, coming for example to July, 1928, which is the first unpaid, is the first month in 1928, as of which there are any unpaid family line bills of Beaumont, Sour Lake & Western, we find that the family line bills audited for the month of July, 1928, amounted to $149,776.97, whereas the total amount unpaid as of April 1, 1933, was $87,494.15. Are we to understand therefrom that the difference between those two figures represents vouchers that have been paid?

A. Yes, sir, that is correct.

Q. And the same explanation we have made with respect to other items throughout this exhibit 129?

A. Yes, sir.

Q. Now, Mr. Eckert, I asked you to have this document which I now hand you, which purports to be the dividends declared by St. Louis, Brownsville & Mexico, on its top, beginning January 1, 1924, checked, and ask you whether you had an opportunity of having this document checked?

A. Yes, sir, I did.

Q. And have you found it correct?

A. I found in the date of declaration, January 19, 1929, the exhibit first showed $222,497.46. That should read $229,497.46, and I have so corrected it.

Q. And you have so corrected it?

A. Now, in the last column I wasn't able to check the dates as of the specific date shown, because I would have to have the annual reports to the St. Louis, Brownsville & Mexico, and/or those years I understand they are here. Outside of that this statement is correct.

Q. The last column states that dividends were declared as of a certain date? A. Yes.

Mr. Brandwen: I offer this in evidence.

Q. (By Mr. McConaughy) As I understand it, you don't know whether the last column is correct or not?

A. I do not, sir.

Mr. McConaughy: How could you offer that in evidence.

Mr. Brandwen: Subject to check.

Mr. McConaughy: All right. Do you only have one copy?

Mr. Brandwen: That was being checked.

Mr. McConaughy: All right. Why don't we have this marked, and then hand it to Mr. Eckert and let him prepare a new table correctly and deliver it to—

Mr. Brandwen: What do you mean correctly?

Mr. McConaughy: Prepare a new table, if it is necessary.

Mr. Brandwen: Yes, if any should be necessary.

Mr. McConaughy: And put it on the typewriter so we can read it.

(Said paper marked by the Reporter Comstock Exhibit 130.) [See Vol. of Exs. p. 206.]

Mr. McConaughy: Mr. Brandwen, haven't you already put in an exhibit showing these dividends in their amount?

Mr. Brandwen: Not in this manner.

Mr. McConaughy: Not in that form. Are not these figures shown in another exhibit?

Mr. Brandwen: Not in that way. I will tell you why, Mr. McConaughy. This gives every single declaration of dividends. There is no schedule gives every single declaration of dividends, and that is what this is designed to do.

Mr. McConaughy: That column is represented in another exhibit?

Mr. Brandwen: Yes, but you see on certain days, as you see, or certain meetings, there were two distinct declarations, and this is the only exhibit in which that is shown.

Mr. McConaughy: All right, but this does include information in other exhibits?

Mr. Brandwen: Yes.

Q. Mr. Eckert, I show you three sheets of a document and ask you whether you have had an opportunity of examining this before? A. Yes, sir, I have.

Q. State what that is, will you, please?

A. This is a copy, photostatic copy of an entry which debits the family lines with certain advances made, or, rather, transfers family line bills from St. L. B. & M, B. S. L. & W., O & N W, and N I & N, to the N O T M. It is an extract from the supporting papers on entry No. 56, journal entry No. 56, entered on the N O T M's books as of December 31, 1933.

Mr. Brandwen: I offer that in evidence. And you found this schedule correct, did you not? A. Yes, sir.

(Said paper marked Comstock's Exhibit 131, was received in evidence.) [See Vol. of Exs. p. 207.]

Mr. Brandwen: I now offer in evidence excerpt from minutes of the executive committee of New Orleans, Texas & Mexico, held in New York on January 10, 1928.

Mr. Kirschbaum: Will your Honor please allow my objection to the offering of the excerpt from the minutes? Counsel has offered an excerpt from the minutes.

The Court: Very well.

(Said paper marked by the Reporter Comstock's Exhibit 132, and was received in evidence.) [See Vol. of Exs. p. 212.]

Mr. Brandwen: Now, if your Honor please, I would like to offer now a series of maps. These come from a report prepared by the RFC, when they made a very careful study of the road. They deal only with the Gulf Coast lines, that is, New Orleans, Texas & Mexico, its subsidiaries, and I G N, and there is a map in the back of the 1925 annual report that shows the whole link of Missouri Pacific and N O T M. I just want to show the relationship of the property. I say these four comes from the RFC reports. Mark it one exhibit. It was a report prepared by Mr. Sullivan of the Reconstruction Finance Corporation dealing with a very elaborate study made of the whole railroad.

Mr. Homire: This report, I assume, was prepared by an Examiner for the RFC, Mr. W. W. Sullivan?

Mr. Brandwen: Yes.

Mr. Homire: Does it appear on here that he prepared it?

Mr. Brandwen: No, but that is where it comes from, a series of volumes.

Mr. Homire: I don't recall seeing them. I have never examined them. I don't know anything about them at the moment.

Mr. McConaughy: Is this a published report, Mr. Brandwen?

Mr. Brandwen: This was a report prepared in these proceedings by the Reconstruction Finance Corporation. I

don't think it was ever put [it] in the records. They were reports of about six or seven volumes that Mr. Sullivan made and he made them, prepared them, in connection with testimony that was given before the Commission.

Mr. Homire: I know the railroad examiner in the railroad division prepared a good many maps of this sort, but just what they are I don't recall.

Mr. Brandwen: Will you look at them? They speak for themselves, they show what they are.

Mr. Homire: I take your word for it that they were prepared.

Mr. Brandwen: Look at them.

Mr. Homire: I can't tell anything by looking at them. I am not objecting to them. If you say that is what they are, I have no objection to them.

Mr. Brandwen: This map shows exactly where each road goes from place to place. We have been using a lot of names with respect to various systems. I thought it might be convenient to have them in graphic form just exactly where the system goes and just exactly how they connect up, and the RFC has done a splended job with respect to getting this in the form of a map.

Mr. Kirschbaum: May I point out, your Honor, that these maps are not a year to year map, but cover certain periods of time.

The Court: 1925, as I remember it?

Mr. Kirschbaum: Yes, 1925, is this year, but I think some of the information that he has listed covers other years. Your Honor may remember, for example, some testimony went in as to 1912, I think, and 1916, and we had 1917 the other day. Now, there is no map here for the year 1917, but there is a map from 1915 to 1924.

Mr. Brandwen: Your Honor, here is the first map, 1905 to 1914.

Mr. Kirschbaum: These maps cover ten year periods, presumbably.

Mr. Brandwen: And here is 1915 to 1924.

Mr. Kirschbaum: But they do not reflect the condition of the lines at any particular year. It seems to me we should have a series of maps for every year. If counsel has only 200 exhibits up to now, why not clutter up the record with more maps?

Mr. Brandwen: If your Honor please, I merely want to show it is in graphic form, just what it is, and what places the roads traverse, that is all.

The Court: How many maps do you want to put in?

Mr. Brandwen: I put in these four from the RFC, which we have found, based on our study, were the best maps prepared on the subject. I would like to pay RFC that compliment, they did a splendid job.

Mr. McConaughy: I object to the maps because they haven't been properly authenticated, and I also point out that Exhibit No. 7 contains all the information that purports to be shown there.

Mr. Brandwen: May we look at Exhibit 7? And if Exhibit 7 contains all the information that is already there, I don't want any duplication. I haven't seen Exhibit 7. May that be kept in abeyance just for that one purpose?

The Court: May what be kept in abeyance?

Mr. Brandwen: The offer of the maps, just that one thing?

Mr. McConaughy: I will do this with you—no, I will let my objection stand. I have made an objection.

The Court: Do you want the court to reserve ruling on the objection?

Mr. Brandwen: If your Honor would be so good.

Mr. Homire: If the court please, I would like the record show that I offer no objection to these maps, but unfortunately, I am not in a position to vouch for them of my own knowledge.

The Court: They will have to be authenticated some way, or the court will have to sustain the objection.

Mr. Brandwen: Meanwhile, might they be marked for identification, if your Honor will reserve his ruling?

Mr. McEwen: I have a special objection to one reading at the top: "New Orleans, Texas & Mexico Railway Company".

The Court: It hasn't even been marked, has it?

Mr. McEwen: Hasn't it been marked? If I might have that marked for identification I would like to take objection to it.

Mr. Brandwen: They will be marked.

(Said maps marked by the Reporter Comstock's Exhibit 133-A, 133-B, 133-C and 133-D, for identification, respectively.) [See Vol. of Exs. pp. 213-219.]

Mr. McEwen: If your Honor please, I object to Comstock's Exhibit 133-A upon the ground that with respect to line between Galveston and Houston, although the exhibit correctly states that that line belonging to the Galveston, Houston & Henderson Railroad is owned jointly by the International Great Northern and the Missouri, Kansas & Texas, each owning 50% of the stock, which is somewhat inaccurate, yet—

The Court: Each one of three has 50%?

Mr. McEwen: Each one has 50% of the stock. In other words, it says: "This line owned jointly by International Great Northern and Missouri Kansas & Texas, each owning 50% of the stock," whereas it really showed, of course, as the fact the Galveston, Houston & Henderson owns that line and it is operated, as I understand it, exclusively, by the International Great Northern, and I should like the concession of counsel to that effect.

Mr. Brandwen: I am not in a position to say anything at all about it. I just don't know that with sufficient detail.

Mr. McEwen: May I then inquire of the trustee's counsel if I correctly stated the fact into the record?

Mr. Dearmont: Mr. McEwen, I just stepped into the court room.

Mr. McEwen: May I ask your Honor's permission to have the Reporter read my objection to the counsel for the trustee?

The Court: Read Mr. McEwen's objection.

(Record read)

Mr. McConaughy: Your Honor, I object to any concession here on the ground that the trustee's counsel is not in a position to make concessions, as far as I can see. The security holders are interested in that property. If he has a claim to it, all right, let him state it.

The Court: Counsel for the trustee is not in a position to make any concession, but I thought he was asking for a concession of fact here.

Mr. McEwen: A concession of fact, yes, not anything else.

The Court: Read the question, Mr. Reporter.

(Question read)

The Court: He did ask for a concession.

Mr. McConaughy: Your Honor, he has a question addressed to counsel for the trustee. I object to it because the document is not in evidence, and there is nothing that can impair the position of the I G N bondholders, because of a document not in evidence.

Mr. McEwen: The document refers to the admission in evidence, yes.

Mr. Dearmont: May I be helpful, your Honor, please?

The Court: I don't know whether you can or not. You can try.

Mr. Dearmont: I won't make any concessions, or any statement of fact with reference to these railroads, but I

might state that I am sure there is in evidence here, it was in evidence before the Interstate Commerce Commission, an absolute and exact and correct description of this property, the International & Great Northern Railroad and the Galveston, Houston & Henderson, exactly where they run and what they own, and I believe maps also are in evidence.

Mr. McEwen: Then, I object to Comstock's Exhibit 133-A upon the ground that it is not the best evidence.

The Court: Your objection is sustained, and Mr. McConaughy's is sustained.

Mr. Brandwen: I have nothing further.

The Court: You mean you rest?

Mr. Brandwen: Yes.

The Court: I just want to make sure.

Mr. Brandwen: Mr. Eckert is furnishing the court with some copies of exhibits that are being corrected.

Mr. McConaughy: May I proceed to inquire?

The Court: Yes.

Cross Examination

By Mr. McConaughy:

Q. Mr. Eckert, you were asked some questions on your direct examination with respect to the treasury department of the New Orleans, Texas & Mexico, and Missouri Pacific. Do you know of any Interstate Commerce Commission accounting rule or regulation which prescribes the number, form or character of the books to be kept by the treasury department of a railroad? A. I do not.

Q. There aren't any, are there?

A. I don't think there are.

Q. Are the cash books of the treasurer of the railroad under the supervision of the auditor of a railroad?

A. Ordinarily they are not under the supervision of the auditor. They usually have a separate treasurer.

Q. Let's take the N O T M.

A. The N O T M had a separate treasurer.

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TRANSCRIPT OF RECORD

Pages 461 to 1000

Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, A HOLDER OF MISSOURI PACIFIC RAILROAD COMPANY 5% SECURED SERIAL GOLD BONDS, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 452

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 453

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 454

ANDREW W. COMSTOCK, PETITIONER,

vs.

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ET AL.

IN WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITIONS FOR CERTIORARI FILED SEPTEMBER 24, 1947.

CERTIORARI GRANTED JANUARY 12, 1948.

United States Circuit Court of Appeals,
EIGHTH CIRCUIT.

No. 13,376. In Bankruptcy.

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5½% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds,

Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Appellees.

No. 13,377. In Bankruptcy.

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5½% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,

Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Appellees.

No. 13,378. In Bankruptcy.

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5½% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,

Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Appellees.

No. 13,379. In Bankruptcy.

ANDREW W. COMSTOCK,

Appellant,

vs.

GUY A. THOMPSON, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor, et al.,

Appellees.

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FILED MAY 21, 1946.

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Q. The N O T M had a separate treasurer and the auditor of the N O T M was not under his jurisdiction?

A. Not under the auditor's jurisdiction.

Q. And that would apply to a local treasurer down in Houston, wouldn't it? A. Yes, sir.

Q. And that situation was true as long as you were acquainted with the affairs of the N O T M, wasn't it?

A. Yes, sir.

Q. Mr. Eckert, does the I C C, I mean by that the Interstate Commerce Commission, send auditors to audit the books, have they sent auditors to audit the books of the Missouri Pacific Railroad Company, and the N O T M and its subsidiaries? A. Yes, sir.

Q. How frequently are those audits made?

A. Well, they are made quite frequently. I think at one time we had a bunch of about 15 men there for the greater part of a year and a half, and then we had them there again—

Q. You are speaking now of the Houston offices?

A. Of the Gulf Coast line, yes.

Q. Of the N O T M and its subsidiaries?

A. Various audits were made. I can't give you the exact years when they were made, but I know that about the time I came there until, well, for four, or five or six years we had auditors there practically all the time.

Q. What would you say about the period from 1924, through 1932, were there frequent audits during that period of time?

A. There were frequent audits made at that time, yes.

Q. Of the books of the N O T M and its subsidiaries?

A. Yes, that is correct, yes, sir.

Q. Now, after the auditors—you might tell us also how many men would attend upon such an audit?

A. Well, we had as many as 16 in one audit that I remember, and we had some with only 4, some with 6 and some with 8; it varied according to the time that they were going to put in on it.

Q. How much time would they spend on an audit?

A. Well, I think I stated that we had one audit there that went almost a year and a half.

Q. And other times it would be considerably less than that? A. Yes, sir.

Q. Now, after the auditors went over the books of the New Orleans, Texas & Mexico, and its subsidiaries, what would happen next, usually?

A. Well, they would point out certain exceptions to the accounts. Some of them we would assent to, as to others our objections were sustained.

Q. In other words, you objected to the exception, and you were sustained in your objection?

A. In some cases we were, yes, sir.

Q. In other words, a good deal of that depends upon an interpretation of the I. C. C. accounting rules; is that right?

Mr. Brandwen: I object to that.

Mr. McConaughy: Is that right? A. That is correct.

Mr. Brandwen: I object to that question, if your Honor please.

Mr. McConaughy: There is an objection.

Mr. Brandwen: I object to the question, if Your Honor please, that a good deal depends upon the interpretation. I don't know whether that is so at all. That question is too general. After all, the fact that an exception is made and that is assented to, that doesn't depend upon interpretation. If an exception is made and there is objection, and there is argument before the Commission, it may not depend upon interpretation at all. There may be a variety of reasons.

The Court: Overruled.

Mr. Brandwen: Exception. And then it calls also for Mr. Eckert's opinion whether it is a matter of interpretation or not.

The Court: The court has ruled.

Mr. McConaughy: Q. I understand you to say, Mr. Eckert, that the exception and your objection to it, is an indication that you and the auditors of the Missouri Pacific and the Interstate Commerce Commission have different views about some rule or regulation of accounting?

A. Yes, sir.

Q. And sometimes you agree with them and make no objection? A. That is correct.

Q. And on other occasions you have made objection and the Interstate Commerce [——] has sustained you in the objection? A. That is correct, sir.

Q. As of March 31, 1933, Mr. Eckert, what was the total principal sum of the advances from the Missouri Pacific Railroad Company, to the New Orleans, Texas & Mexico Railroad Company? A. $10,565,227.00.

Q. Those advances were represented by, largely by three promissory notes, isn't that correct? A. Yes, sir.

Q. What principal sum was not represented by promissory notes? A. $400,000.

Q. Are you sure about that, Mr. Eckert? A. Yes, sir.

Q. $400,000? A. Oh, wait a minute, it was $210,000.

Q. That is right. When was that advanced, at what time or times was that advanced, that $210,000 by the Missouri Pacific to the New Orleans, Texas & Mexico?

A. I think it was made in February, 1933, but I will have to look at the papers I have, if I have any.

Q. Would the date February 1, 1933, refresh your recollection? A. Yes, I said it was February, 1933.

Q. I want the exact date, if you have the information?

A. Just a minute, I will see if I have it. I don't have the exact date. It is February, 1933, though.

Q. Well, it was made in February, 1933, and you wouldn't say that February 1, 1933, was wrong, would you? A. I would not.

Q. Mr. Eckert, at page 280 of the transcript you testified concerning a sum of $2,548,916.40, representing interest on first mortgage bonds of the Brownsville Company, which was "written up", as Mr. Brandwen described it. Do you remember that sum? A. Yes, sir.

Q. There was another sum of $440,409.32, representing interest on bonds of Beaumont, Sour Lake & Western?

A. Yes, sir.

Q. And that Mr. Brandwen said had been "written up". Do you recall? A. Yes, sir.

Q. Will you tell us what happened to that written up interest?

A. That interest on behalf of the St. L. B & M covered—

Q. I am not asking you what it was, Mr. Eckert, but just what happened to it after it was written up. Mr. Brandwen has showed resolutions here of the three corporations restoring that interest? A. Yes.

Q. Now, what happened after that was done?

A. That interest was paid.

Q. That interest was paid, was it?

A. Paid to the N O T M, yes.

Q. How was it paid? A. Family line settlement.

Q. Mr. Eckert, do you happen to have copies of exhibits 118 and 119 with you? I want to speak with you a minute about them. A. 118 and 119, I have them, yes, sir.

Q. Now, on Exhibit 118, I think your Honor might be interested in seeing this, column headed "Joint expense there, joint expenses". Another one: "Material and supplies". Now, some of those items represent—

The Court: Which are you looking at?

Mr. McConaughy: I am looking at 118, your Honor.

The Court: I don't find that column. Oh, yes, I have it.

Q. (By Mr. McConaughy) Some of those items represent additions and betterments, don't they, shown in those two columns?

The Court: Joint expenses, and what is the other column?

Mr. McConaughy: Material and supplies.

The Court: All right.

A. Yes, some of them cover equipment trust notes.

Mr. Brandwen: What is that?

The Court: Read the question and the answer.

(Question and answer read.)

Q. (By Mr. McConaughy) What about joint expenses, there are A's and B's in that, aren't there?

A. Might be road and equipment, a proportion that would be chargeable to betterments, might be included in that.

Q. Isn't it true, Mr. Eckert, that this family line account

was the one through which any of advances to the subsidiaries of the N O T M for the A's and B's would show up? A. Yes, sir, that is correct.

Q. And the same thing applies to [exhibits] 118, isn't that true? A. Yes, sir.

Mr. McConaughy: I have nothing more, your Honor.

Redirect Examination

By Mr. Brandwen:

Q. Mr. Eckert, you testified in response to Mr. McConaughy's question that once the Interstate Commerce Commission Examiners were in for a year and a half. When was that?

A. It was beginning sometime in 1932, I think, 1931, perhaps, and they were there for about a year and a half. Now, I haven't any definite—I couldn't get the definite schedule, but when the examiners came to my office they presented a letter from the bureau head in Washington, and those letters I haven't been able to locate; otherwise, I could give you the exact information on it, but they were there pretty regularly, in fact, I will say quite regularly, and sometimes they were there for a year and a half.

Q. Was there any other time when they were there as long as a year and a half?

A. No, probably not as long as that, but they were there for a period of about four, five or six months.

Q. But the only time they were there as long as a year and a half was, you say, around—

A. Checking these 1931, and 1932, accounts, I recall it now.

Q. And they were there one year and a half?

A. Yes, sir, about a year and a half.

Q. And a large staff of men were there?

A. Yes, sir. They started off with probably four or five and then would build up until they would have as many as we had room for.

Q. Were there any changes that were made in your records pursuant to anything—any suggestions made by the examiners during the course of their examination?

A. Oh, yes, there were some changes.

Q. There was some changes made, while the examiners of the Interstate Commerce Commission were examining the books of account and records of the New Orleans, Texas & Mexico, during that period of time that you gave that were there, there were changes made by officials and employees of New Orleans, Texas & Mexico, and its subsidiaries in conformity with the suggestions that the examiners made during the course of the examination?

A. I might qualify that by saying, I will say yes, that the examiner that came there now, Mr. L. F. Ormond, was a very high grade examiner and he is now comptroller of the Atlantic Coast Line, and he came there, and I think it was the first time that the commission ever permitted an examiner to point out what exceptions should be made, of course, subject always to the approval of the director of the bureau of accounts of the Interstate Commerce Commission, and that year we made certain changes and assented to them, and probably two or three years later, after we had assented—

Q. (By The Court) You mean changes suggested by Ormond?

A. By Ormond. Perhaps two years later, when the audit was all complete, there was a stack of papers that was probably two feet [through] before he got [high.]. They were all approved, those that were assented to, were approved by the bureau of accounts of the Interstate Commerce Commission.

Q. (By Mr. Brandwen) You mean those that were assented to during the course of the examination? A. Yes.

Q. I see.

A. And some others we had correspondence with the Interstate Commerce Commission direct with the director of the bureau of accounts of the Commission, at Washington, we had correspondence direct with him, but we couldn't agree with Mr. Ormond, or, as far as that is concerned, with any of the other examiners that came clothed with that authority.

Q. Mr. Eckert, do you want us to understand that the only time or the only occasions when the Interstate Commerce Commission took exception to specific matters in

the books of the New Orleans, Texas & Mexico, and its subsidiaries, were times when there was simply a difference of interpretation as to regulations between Interstate Commerce Commission and you and your staff?

A. You mean that was the only time they ever made an examination of our accounts?

Q. No, no.

The Court: Read the question, Mr. Reporter.

(Question read.)

A. That is a pretty hard question to answer, counsel, because they came there and made these examinations, and pointed out some things. Sometimes we would get letters from Washington direct without these examiners being there that pointed out some things to us that they said we were wrong, and when we found we were wrong we agreed to the exceptions taken.

Q. (By Mr. Brandwen) All I want to ascertain from you, Mr. Eckert, is this, that when you say when you found you were wrong, you don't mean to have us understand that it was simply a matter of interpretation, but that you didn't observe the regulations of the Interstate Commerce Commission with respect to that particular item?

A. You mean by that, Mr. Counsel, that we wilfully—

Q. Not wilfully. A. Made a false entry in the accounts.

Q. I didn't use the term wilfully, and I didn't use the term false, I simply said that you didn't observe—I am not referring to you personally, Mr. Eckert, that the staff did not observe the regulations of the commission and the commission called that to the attention of the people there, and that was corrected. I am not saying it was done wilfully, or I am not saying it was done falsely.

A. Well, I don't know exactly what you are getting at, but I think that we had occasions where we probably, like any other human, we erred, and, of course, by erring we corrected it, so that people when they came there and told us you mustn't do this, you mustn't do that, you are wrong here, you are wrong there, we corrected our records accordingly.

Q. And when they stated to you that you were wrong

and that you corrected them, you did not feel it was simply a matter of interpretation by the Commission of the regulations versus your interpretation?

A. I don't know whether you are a railroad accountant, or not, but I can find—I can't find two railroad accountants that agree on some of the very complex accounting regulations that we had.

Q. (The Court) They don't agree like lawyers?

A. No, they don't always agree like lawyers.

Q. (By Mr. Brandwen) I haven't any doubt as to what you say on all those matters, but there are certain matters that don't lie in the realm of the complex or the difficult to construe, but certain things that are in the realm of the much clearer, and with respect to those matters I find it difficult to believe that you would want us to understand that the only time that corrections were made were only with respect to difference of interpretation on complex matters. Am I not correct in that belief, Mr. Eckert?

A. I don't know that I am sure what you are trying to ask me, counsel.

Q. Mr. Eckert, sometimes when you were advised by the Commission that a certain amount was in error, wasn't it a fact that on some occasion at least, it wasn't a matter of interpretation, and that is all I am trying to get.

A. Probably so. There might have been occasions where it wasn't a matter of interpretation.

Q. Yes. Now, coming to exhibits 118 and 119, let's address ourselves to 118, which deal with the family line bills of St. Louis, Brownsville & Mexico, in the item of joint expenses. That, as you testified, included among others maintenance of way expenses, didn't it? A. Yes, sir.

Q. Is that an addition and betterment? A. No, sir.

Q. That also included among other things that item of [of] joint expenses, maintenance of equipment?

A. Yes, sir.

Q. Is that an addition and betterment?

A. No, that is not an addition and betterment account, but there may be some items in there that might be chargeable to equipment account.

Q. But maintenance of equipment is not addition and betterment? A. No, sir, it is not.

Q. I just want to get that straight, so we understand now that to the extent that this category, joint expenses, listed in our exhibit 118, includes items dealing with maintenance of equipment and maintenance of way, those items at least, do not involve any additions and betterments, that is correct, isn't it?

A. Not always. You might find an item that is charged to your maintenance of way and maintenance of equipment expenditures that would later be in the revision of the accounting, and perhaps you might find some that should have gone to repay equipment accounts.

Q. But generally, that is not so?

A. Generally, this covers what I said this morning, it covers the operation of the railroad.

Q. Those that are not related to additions and betterments, is that correct?

A. Yes. You might find some additions and betterments in there, though, that would later be called out.

Q. But they would be the exception?

A. Oh, yes, they might be the exception.

Q. The exception in this category of joint expenses in exhibit 118? A. Yes.

Q. (By Mr. Brandwen) Now, you also stated this morning, did you not, that among the expenses, among the items covered by the category of joint expenses was a proportion of traffic expenses?

A. Yes, I assume there was some traffic, because this charge is made up, as I stated, of what we call our pooled bill. That includes the matter of expenses mainly, as you stated, chargeable to transportation and the maintenance of roadway, maintenance of equipment, and traffic in general.

The Court: What do you mean by transportation?

The Witness: Transportation is operating the trains, your Honor.

Q. (By Mr. Brandwen) And certainly the transportation expense should not be regarded in any way as in the category of addition and betterment?

A. No, unless there was some adjustment made where

there might be something charged to the R. & E. account later on.

Q. But that would be an exceptional case?

A. That might be an exceptional case, yes, sir.

Q. And you also had a proportion of traffic expense?

A. Yes, sir.

Q. And that normally would not be allocatable in any way?

A. All in the same category with the other expenses. For instance, in that traffic expense you might have purchase of a lot of new furniture for some fine office that they have established down there, and that would be chargeable, in the first place, to operating expenses, and then later on found that should have been capitalized, and in that way you would get the R. & E. expenditure out of it.

Q. But those would be exceptional items, would they not? A. Yes.

Q. Exceptional in this group? A. Yes.

Q. You are dealing with a schedule here—

The Court: What do you mean by R. & E.?

The Witness: Road and equipment.

Q. (By Mr. Brandwen) And in dealing with these items that appear here on Schedule Exhibit 118, they would be exceptional cases at most? A. Yes, sir.

Q. Am I not correct in having it understood that in the table of family line bills of St. Louis, Brownsville & Mexico, contained in Exhibit 118, that are in the category of joint expenses, that the overwhelming bulk of them represent operating items?

A. The major part of it is operating expenses.

Q. Now, then, with respect to the category of fuel oil, that, I think, is quite—that is self-explanatory?

A. Yes, sir.

Q. That clearly is an operating matter? A. Yes, sir.

Q. Per diem, reclaims and mileage, that would be a clearly operating item, wouldn't it?

A. Yes, sir, except insofar as work equipment used in connection with the building of new projects.

Q. Would that come under per diem, reclaims and mileage?

A. Yes. If you would make your adjustment there, Mr. counsel, you would find that a part of that would have to go to road and equipment expenditures.

Q. But that would also be an exceptional item?

A. That would also be an exceptional item, yes, sir.

Q. And equipment rents is clearly an operating item, isn't that so?

A. Not clearly. You might have equipment rents that would be charged to road and equipment, too.

Q. But that would also be an exceptional item here?

A. Yes, it would be exceptional.

Q. So that by and large anything in this entire schedule of this $10,211,337.00 of family line bills, that would not be chargeable to operating matter, to an operating account, would be exceptional, isn't that true?

A. It would be exceptional. I couldn't tell you how much it would be.

Mr. McConaughy: May I hear the last question, please?

The Court: Read the question.

(Last question read.)

A. I said, I think I said I couldn't develop the amount, if that is what you are getting at, so I can make the general statement that I would agree with you that it is exceptional.

Q. (By Mr. Brandwen) And what you have just testified to with respect to Exhibit 118, that is, as to St. Louis, Brownsville & Mexico, would apply similarly to Beaumont, Sour Lake & Western? A. Yes, sir.

Q. I don't think the other items on this schedule require any particular questionirg.

A. I think the same answers would apply.

Q. And the Beaumont schedule is Exhibit 119?

A. Yes, sir.

Mr. McConaughy: Will you excuse me just a second, your Honor?

Mr. Brandwen: I didn't hear that.

The Court: He asked to be excused for a second.

Mr. McConaughy: Oh, I thought you were finished. Excuse me.

Mr. Brandwen: No, no.

Q. Mr. Eckert, you testified in response to Mr. McConaughy's question that the amount of advances due from Missouri Pacific, N. O. T. M. to Missouri Pacific, was $10,565,000.00? A. $10,565,227.00, I said.

Q. Now, do you have any figures supporting that answer of yours? A. No, I haven't anything but the memorandum.

Q. The memorandum. May I see what memorandum you have, please?

A. I have a memorandum here that shows—

Q. May I see the memorandum, please?

A. I took this figure here and this figure—

Q. May I see that? A. Yes.

Q. Now, that is, you refer to—you said you took what and what? A. I took these two figures.

Q. Show me which ones? A. Right here, $10,355,227.00, and added that to it.

Q. I see. Now, will you state to me, please, what there is in this memorandum to indicate that there were advances of $10,565,227.00 from Missouri Pacific to New Orleans, Texas & Mexico?

Mr. McConaughy: What period are you talking about?

Mr. Brandwen: He just testified that the advances of the Missouri Pacific to N. O. T. M. were $10,565,227.

Mr. McConaughy: I beg your pardon, I asked him as of March 31, 1933.

Q. (By Mr. Brandwen) All right, as of March 31, 1933?

A. You want to know how that is made up by years?

Q. Yes. Do you have a schedule?

A. I don't have the schedule. I have got to prepare that for you if you want it.

Q. No, I am not asking you to prepare anything for me on that, I am just asking you, I would like to know the details of how you arrived at your answer to Mr. McConaughy's statement that as of—his question that as of March 31, 1933, Missouri Pacific had advanced to New

Orleans, Texas & Mexico $10,565,227.00, if you do not have any information?

A. I don't have the full information here to give it to you, but I can get up a statement to show you how that was made up and what dates they were advanced, dates the amounts were advanced.

Q. You don't have with you any memorandum to enable you to state when advances were made, with you, when advances were made from Missouri Pacific to New Orleans, Texas & Mexico, do you?

A. No, I don't have a statement here that I could tell you exactly.

Q. You don't have any memorandum with you that would enable you to tell us in what form the advances were made? A. No, sir, I don't have that statement.

Q. You don't have any information with you to enable you to say what repayments were made by N. O. T. M., by Missouri Pacific? A. I don't have that, no, sir.

Q. You don't have any records?

A. That can be gotten up.

Q. With respect to dates.

A. I can get it up with respect to dates showing the complete and full information, but I don't have it here.

Q. You don't have any of that information? A. Not here.

Mr. Brandwen: Well, if your Honor please, I would like to examine Mr. Eckert with respect to the details of how he arrives at that statement, and inasmuch as he doesn't have his records and books here, with your Honor's permission I am willing to—

Mr. McConaughy: I think we can supply the omission, Mr. Brandwen. There is an exhibit in the record.

Mr. Brandwen: Do you want to give that to Mr. Eckert? I am asking for information.

Mr. McConaughy: Could you refresh your recollection from that, Mr. Eckert? Was that prepared from the books and records? That is an Exhibit, your Honor, filed with the Interstate Commerce Commission, and now in this case.

The Witness: Exhibit No. 226.

Mr. Brandwen: I object to that statement now in this case.

Q. (By Mr. Brandwen) Mr. Eckert, I show you Comstock's Exhibit 1 for identification. Would you look at that carefully, please? That is the proof of claim which is the subject matter of this hearing. Will you look at that, please, and after you have done that, if you let me know I would like to question you about it.

Mr. Kitchel: May I object to the statement that this claim is the subject matter in this hearing, this statement. The subject matter of this hearing is the objection which counsel has filed with [rhe] report of the Commission insofar as it affects these advances. The hearing is not on this claim as filed with the Special Master.

The Court: Objection sustained.

Mr. McConaughy: I also object to this last question, because he didn't let Mr. Eckert finish the first question, the previous question.

The Court: Sustained.

Mr. Brandwen: I thought the previous question was answered.

Mr. McConaughy: You asked him if he had anything to refresh his recollection as to the detail of that ten million dollar amount that we are talking about, of advances. Now, you didn't let him finish that question.

Q. (By Mr. Brandwen) Finish that. Have you?

A. I have Exhibit 226, which is already in the proceedings.

Mr. Brandwen: I move to have that statement stricken out, if your Honor please.

The Court: Why?

Mr. Brandwen: Because I object to the fact that is in these proceedings.

Mr. Homire: Your Honor ruled on that yesterday and ruled that matters before the Commission were in the record.

Mr. Brandwen: I understand. I would like to have my exception on that, that is all.

The Court: Very well.

Q. (By Mr. Brandwen) You have just been handed by Mr. McConaughy a document which has been described as Exhibit 226 in the proceedings before the Commission?

A. That is correct.

Q. And that will refresh your recollection as to how the figure of $10,565,227.00 is arrived at? A. Yes, sir.

Q. All right. Have you looked at Comstock's Exhibit 1 for identification?

A. You just passed it over to me. I looked at it, yes, sir.

Q. You looked at it. I wish to call your attention to this statement in the Comstock Exhibit 1, for identification, proof of claim, I will read verbatim. "Cash advances for operation, interest payment, and so forth, at various times, from March, 1929, to February, 1933, both inclusive, in the amount of $10,565,226.78." Now—

Mr. McConaughy: Let Mr. Eckert have that, will you?

Mr. Brandwen: Yes, surely. Do you see what I am referring to Mr. Eckert, there? A. $10,355,000.00?

Q. No. May I show it to you? A. Sure.

Q. Right here? A. Yes, sir.

Q. What was the first advance in March, 1929?

A. On this statement?

Q. No, I asked you what was the first advance from Missouri Pacific? A. The first advance for operation?

Q. From March, 1929, that is what the claim states?

A. Interest payment, et cetera, at various times from March, 1929, to February, 1933, both inclusive.

Q. Now, I ask you, Mr. Eckert, will you please tell me what was the date of the first advance from Missouri Pacific to New Orleans, Texas & Mexico in March, 1929?

A. The first advance in March, 1929, was five hundred thousand dollars.

Q. Five hundred thousand dollars? A. Yes.

Q. Now, then—

Mr. McConaughy: What are you going to do, go down the list?

Q. (By Mr. Brandwen) I am going to ask you to give the list of all the advances from March, 1929, to March 31, 1933.

Mr. McConaughy: I object to that, your Honor. Here is the list in evidence, already. There is no need of taking all of that time to ask the witness to [repeat] figures that are right on that exhibit.

Mr. Brandwen: I beg your pardon.

Mr. Kirschbaum: I join in the same objection made by counsel.

Mr. Brandwen: Would your Honor please look at this exhibit?

Mr. McConaughy: What he wants to do is to show that there is a slight error in the statement in Exhibit No. 1.

Mr. Brandwen: Oh, you say slight error? Here is the proof of claim.

Mr. McConaughy: The proof of claim is filed on promissory notes.

Mr. Brandwen: The proof of claim speaks for itself.

The Court: Read me the question.

(Question read.)

The Court: Sustained.

Mr. Brandwen: Exception.

Q. (By Mr. Brandwen) What is the total of the advances made beginning with March, 1929, to February 1, 1933, both dates inclusive?

Mr. McConaughy: I object to that as immaterial and irrelevant.

Mr. Kirschbaum: Will your Honor note my objection as well? I feel there must be a total stated on the exhibit.

A. I can make a mathematical calculation.

Mr. McConaughy: Wait, Mr. Eckert, the Court hasn't ruled on my objection yet.

The Court: Sustained.

Mr. Brandwen: Exception.

Q. (By Mr. Brandwen) Mr. Eckert, do you know now whether all these items in the column "Advances made", represented cash advances made by Missouri Pacific to N. O. T. M.?

Mr. Kirschbaum: If your Honor please, I object to the question, the exhibit speaks for itself.

The Court: He may answer.

Q. (By Mr. Brandwen) Do you want to look at it?
A. Whether the cash was actually advanced?
Q. Yes. A. I think it was.
Q. You think it was? A. Yes, sir.
Q. May I ask you this: I call your attention to an item, October 31, 1932, of $1,261,010.00, and ask you whether there was any cash advance with respect to that item?
A. Yes, sir; I think the cash was advanced to the N. O. T. M. by the Missouri Pacific.
Q. You [thin] so. Do you have any books that would enable you to answer that question directly and fully?
A. I have a memorandum here, I think. If I may read this, I will read the memorandum.
Q. That memorandum is from where?
A. It was prepared on July 5, 1935.
Q. Prepared July 5th by you?
A. No, by the then chief accounting officer. If I may read it into the record I think it will clear this up.
Q. Don't you have any memorandum or journal entry that was entered at the time of this transaction?
A. I don't have the entry, no.
Q. There was a journal entry made as of that time, wasn't there?
A. As between the N. O. T. M and the I. G. N, I think there was one.
Q. Was there any journal entry made as of October 31, 1932, between Missouri Pacific and New Orleans, Texas and Mexico, as of that time?
A. I couldn't answer that without looking in the record.

Q. If, as you say, an advance was made by Missouri Pacific to N. O. T. M. as of October 31, 1932, in the amount of $1,261,010.00, and if it were the subject matter of a journal entry, that would be the best evidence as to what actually took place at that time, isn't that so? A. Yes, sir.

Q. Now, based on my question, and based on refreshing of your recollection, which may have been facilitated by my question or by any memorandum that you have, can't you now state that there was a journal entry involving the Missouri Pacific and N. O. T. M., dealing with $1,261,010.00?

A. There was a journal entry as between the Gulf Coast Lines and I. G. N., N. O. T. M. and I. G. N., but I think that the money was advanced to the N. O. T. M.

Q. You mean to say—

Mr. McConaughy: Wait a minute. Please let him answer the question.

Mr. Brandwen: I thought you answered.

Q. Yes, go ahead. Have you finished?

A. No, I haven't finished. I could clear this up if I could be permitted to, if your Honor would permit me to read this memorandum.

The Court: Go ahead.

A. "Indebtedness of the various Gulf Coast Lines to the I. G. N., represented by bills, interest and unfunded debt and miscellaneous advances increased from time to time by reason of the inability of the Gulf Coast Lines to pay the amount in cash until in October, 1932, the amount involved was $1,261,009.84.

Mr. Brandwen: If your Honor please—

The Witness: "At the same time International-Great Northern was indebted to the Missouri Pacific for advances made in an amount in excess of the indebtedness of the Gulf Coast Lines. It was impossible for the Gulf Coast Lines to pay the I. G. N. in cash, and in order to simplify the accounting and to satisfy the criticism of the Railroad Credit Corporation, arrangements were made for the Missouri Pacific to advance the N. O. T. M. an

amount of $1,261,009.84, and to credit the I. G. N. with a like amount representing advances to that company. At the same time the Gulf Coast Lines made journal entries upon their books cancelling the debt of their various companies to the I. G. N. and taking up the additional advance for Missouri Pacific of a similar amount of money. While the I. G. N. adjusted its account between the Missouri Pacific and the several Gulf Coast Lines, which in reality transferred the debt of $1,261,009.84, being received from the Gulf Coast Lines to the I. G. N., from the latter company to the Missouri Pacific, this adjustment was made by journal entry, no cash changing hands." That, as I understand it, was the transaction between the Gulf Coast Lines and the I. G. N., but this indicates, I have no personal knowledge, because I wasn't here at that time, that this money was actually advanced to the N. O. T. M.

The Court: This is your own statement, prepared by you, is it?

The Witness: No, it was prepared by Mr. Johnson.

Q. Prepared by Mr. Johnson?
A. Yes, in explanation of the item.

Mr. Brandwen: Q. Are you through? A. Yes.

Mr. Brandwen: I move to have this answer stricken out entirely. I want to come back to the journal entry which was made at the time this transaction was dealt with.

Mr. McConaughy: Your Honor, Mr. Eckert is Mr. Brandwen's witness.

Mr. Brandwen: If your Honor please, this is an attempt to get at what the facts are. I don't think that we ought to be bound by such doctrines, whether this is one man's witness or another man's witness.

The Court: Motion sustained.

Mr. Brandwen: Exception—I am sorry; it was my motion; I beg your pardon. I didn't know whether there was a motion made.

The Court: It was your motion that was sustained.

Mr. Brandwen: Thank you. I just want to take a second. I think I have got a copy of that journal entry. It may take me a minute to find that.

Q. (By Mr. Brandwen) Mr. Eckert, I show you a document and ask you whether you have seen this or a copy thereof anywhere in the Missouri Pacific Railroad books of account?

Mr. McConaughy: Is that an exhibit?

Mr. Brandwen: That is not an exhibit. I would rather have the books here, but since the books aren't here, and in the interest of saving time—

The Witness: This indicates this was a transfer, or, rather, charged as an advance to the N. O. T. M.

Mr. McConaughy: Before you testify, may I look at that paper? Do you object, Mr. Brandwen?

Mr. Brandwen: No, no. I just asked him whether that refreshed his recollection.

Mr. McConaughy: Do you want to hear the question again, Mr. Eckert?

The Witness: Yes.

(Question read.)

A. No, I haven't seen this entry.

Q. (By Mr. Brandwen) You have never seen this entry?

A. No. I wasn't here in 1932.

Q. You haven't seen it since this entry was made?

A. No, I didn't see it then because I wasn't connected with the Missouri Pacific at that time.

Q. I understand. But you didn't or you hadn't seen this before you testified with respect to the amount of advances? A. I had not.

Q. From Missouri Pacific? A. I had not, sir.

Q. To N. O. T. M. as of March 31, 1933? A. No.

Mr. Brandwen: I would like to have meeting of the Board of directors of the Missouri Pacific as of October 11, 1932, if we have that here. Would your Honor excuse us just a minute.

Mr. McConaughy: Now, where are we going to get with that? Mr. Eckert says that he wasn't here. Mr. Johnson supervised that. What will that do?

Mr. Brandwen: I want to show what the Board did with respect to it.

Mr. McConaughy: Isn't that in evidence already?

Mr. Brandwen: No, that is not in evidence as yet. If the Board did something with respect to this item, I think it is very material with respect to what its effects may be. I should like to offer this journal entry No. 33 from the Missouri Pacific books, detailing, according to the Missouri Pacific book, material connected with this Item of $1,261,009.84. I cannot say at the moment whether everything that is in these three pages is on the actual journal entry or whether the journal entry is contained in here and refers to the other things that are contained on the journal entry, and I show this to you and ask you whether these three pages, whether they refresh your recollection in any way?

Mr. McConaughy: Before you answer, Mr. Eckert, I would like to see that. Go ahead and look at it.

The Court: Don't answer until you show it to counsel.

(Witness hands same to Mr. McConaughy.)

Mr. McConaughy: That may be put in evidence subject to check. We have no objection.

(Said Comstock's Exhibits 134-A, 134-B and 134-C, was thereupon marked by the reporter, and received in evidence.) [See Vol. of Exs. pp. 221-225.]

Q. (By Mr. Brandwen) Does this Exhibit 134 refresh your recollection in any way?

A. It does not, because I hadn't seen it before.

Q. You had never seen it before? A. No, sir.

Mr. Brandwen: I have a written copy of this that might facilitate matters.

Q. (By Mr. Brandwen) Mr. Eckert, I call your attention to a statement appearing in the Exhibit No. 134.

Mr. McConaughy: Let him see it.

Mr. Brandwen: Yes.

Q. Which has a memorandum from Mr. Wyer to Mr. Baldwin, as part of this exhibit, and among the things that it states, and I can point that out at the beginning of the second paragraph of Mr. Wyer's memorandum, Mr. Eckert, may I help you with it, Mr. Wyer states to Mr. Baldwin—may I just [pause] there? I think that I can make this question a little clearer if I read the preceding paragraph, it isn't long at all, and it will throw, I think, considerable light. May I do that, please? This is addressed by Mr. Wyer to Mr. Baldwin: "The Missouri Pacific has, as you know, advanced to the I. G. N. various amounts on which the latter company is currently paying interest at the rate of six per cent per annum. On the other hand, the I. G. N. has also advanced substantial amounts to the N. O. T. M. and subsidiaries on which the latter companies are not paying interest." Let me pause there for a moment. I want to ask you now, whether from an examination of that journal entry you can state what, if anything, was advanced by the I. G. N. to N. O. T. M. itself?

A. I couldn't make any statement on that, counsel, until I looked at the entry itself. As I said a while ago, I haven't seen any of these entries at all, this is all news to me, I would have to look at it more closely before I could answer that question.

Q. I see. You couldn't from an examination of that answer that? A. I couldn't tell, no, sir.

Q. You couldn't tell from that?

A. No, sir, I couldn't answer it. I wasn't here at that time. You are asking me questions about 1932 when I was in Houston; I wasn't here.

Q. But you were with New Orleans, Texas & Mexico at that time?

A. Yes. These are Missouri Pacific entries. This is a Missouri Pacific Railroad entry.

Q. But this memorandum of Mr. Wyers purports to deal with dealings between New Orleans, Texas & Mexico and I. G. N.

A. Then I would have to look at their entries before I could tell you what transpired down there. I couldn't make any statement from that entry here.

Q. You couldn't? A. No.

Q. Even accepting this entry as it outlines the amount, you couldn't answer that?

A. I wouldn't want to do it without looking at the books themselves.

Q. You wouldn't want to do that without checking it?

A. No.

Q. Then we will pause with respect to that for a moment. Mr. Wyer continues: "The Chairman—" this is written on Missouri Pacific [stationary] or a Missouri Pacific entry, written October 31, 1932. "The Chairman has requested me to arrange this matter and in this connection has suggested that the policy of a subsidiary loaning to its parent company be discontinued," and then he proceeds with this statement, then Mr. Wyer proceeds with this statement concerning which I should like to ask you. "This could be done if Mo. P. will advance amount required, $1,400,000.00 to the N. O. T. M., which will then pay its bills to the I. G. N. and the I. G. N. will use the money to reduce its advance from Mo. P." I now, ask you, Mr. Eckert, to look at this statement, which is Exhibit 226, before the Interstate Commerce Commission, and see whether you find any time from October on an advance from Missouri Pacific to N. O. T. M. of $1,400,000.00?

A. There is one here in 1932, $1,261,010.00.

Q. That is the item, the specific amount contained in this journal entry, isn't that, which is Exhibit 134, isn't that correct?

A. Yes, this $1,261,009.84, debits the N. O. T. M. and credits the I. G. N.

Q. Now, I renew my question to you, whether you find any item or any record on that Exhibit 226 before the Interstate Commerce Commission, which shows any advance, as Mr. Wyer stated, of the amount required, $1,400,000.00, by Missouri Pacific to the N. O. T. M.?

A. No item of $1,400,000.00 on this statement here.

Q. Or outside of this $1,261,009.84, or as stated there,

$1,261,010.00, the cents being omitted, is there any other group of items that amount to $1,400,000.00 after that?

A. No. In December—rather, November 28th, 1932, there was $35,000.00 advanced, and December 30th, 1932, $79,000.00.

Q. But you don't find anything there at or about that time or any time after or at about the time of the execution of this journal entry of $1,400,000.00?

A. No item of $1,400,000.00.

Q. Do you agree with this, Mr. Eckert, as Mr. Wyer stated, in this memorandum to Mr. Baldwin, contained in this journal entry, namely, that is Missouri Pacific advances to N. O. T. M., $1,400,000.00, as Mr. Wyer stated, and then N. O. T. M. paid bills to the I. G. N. and I. G. N. would use that money to reduce the advances from Missouri Pacific or to I. G. N., if those steps were done that Mr. Wyer outlined, would you agree with Mr. Wyer's statement which follows as the last sentence in that paragraph, I. G. N. will be left owing the same net amount as before, but all to Mo. P. instead of having this loan to Mo. P. offset probably by its loans to the Gulf Coast Lines?

Mr. Kirschbaum: If your Honor please, I object to the question, it is a suppositious question not based on facts, calls for the witness' opinion and conclusion.

Mr. Brandwen: It is an accounting matter.

Mr. Kirschbaum: He asked him what he would do if such and such were the case.

The Court: He may answer.

Mr. Kirschbaum: Except.

A. The money could be advanced to the N. O. T. M.

Q. (By Mr. Brandwen) What is that?

A. The money could have been advanced to the N. O. T. M.

Q. It could have been? A. Yes.

Q. But you looked for it and didn't find it on this Schedule 226, isn't that correct?

A. Yes, I didn't find it on there.

Q. You didn't find it on there?

A. I didn't find the amount of $1,400,000.00, but there was $1,261,000.00.

Q. You found $1,261,010.00, which is the precise amount except for the cents contained in this journal entry?

A. Yes. I was under the impression, counsel, that that money was actually advanced to the N. O. T. M. when I testified a while ago, but I wasn't here, and I don't know much about it. There are other people here that know more about it than I do.

Q. Mr. Eckert, I appreciate all that, but I want to make it perfectly clear all I was trying to do was to get information with respect to it, but you can very well understand that since you testified with respect to the advances, I had no alternative other than to ask you about them. I want to make it clear that's the only purpose of my asking you.

A. I read a letter from my predecessor in which he indicated, and that is all I knew about it, that the advances had been made by the Missouri Pacific to the N. O. T. M.

Q. But based on all this, you have a question about that at the present time? A. Some question about it.

Q. Had you examined—I assume, then, that you had not examined into the details that preceded this statement of your predecessor before coming here?

A. I did not, no, sir.

The Court: How much longer are you going to be with this witness?

Mr. Brandwen: I think I will be through with him in probably a few minutes. I would like to offer in evidence a resolution of the Board of Directors of Missouri Pacific of October 11, 1932, that has some relationship to this subject.

Mr. McConaughy: We won't object to it if you will read from this down to there (indicating).

Mr. Brandwen: Mr. Griffin would like to see it. (Hands same to Mr. Griffin.)

Mr. Brandwen: If your Honor please, Mr. McConaughy

has asked me whether I wouldn't consent to the offer by him of other portions.

Mr. McConaughy: To include them in the minutes you offer.

Mr. Brandwen: I haven't any objection if Mr. McConaughy will treat that as his offer, I will have no objection.

Mr. McConaughy: We tried that yesterday and it didn't work.

Mr. Brandwen: But I have no objection.

Mr. McConaughy: This is your case and you can either put in all the minutes or not, or I will consent to you eliminating the parts I have indicated, just to save time.

Mr. Brandwen: Well, I would like to study the other more. I don't want to take the time of the Court to do that.

Mr. McConaughy: Your Honor, he certainly must know what is in the minutes that he is offering here.

Mr. Brandwen: But I haven't studied these. There were things here that I wasn't interested in. (After reading same.) I will be agreeable to that.

(Said paper was marked by the reporter as Comstock's Exhibit 135, and was received in evidence.) [See Vol. of Exs. p. 226.]

Q. (By Mr. Brandwen) Mr. Eckert, I ask you to look again at Exhibit 226 that Mr. McConaughy produced earlier this afternoon and ask you to look particularly at an item which is designated in this exhibit "plus special advance for miscellaneous physical property." Will you look at that? I want to inquire about that.

A. Yes, sir, that is an item for $109,179.00 advance in March, 1929, of which there was repayment on March, 1931, of [$8800,00.00], bringing the net down to $100,379.00. That money was advanced. That is your question?

Q. Yes.

A. For the purpose of acquiring some property at Corpus Christi, Texas.

Q. Acquired by New Orleans, Texas & Mexico?

A. Acquired by, as I recall it now—the money was advanced to the New Orleans, Texas & Mexico, but I believe the property was purchased in the name of the Missouri Improvement Company.

Q. Would you undertake to produce as soon as you can any entry, record or check which would show that New Orleans, Texas & Mexico ever received a dollar in connection with this property by way of advance from Missouri Pacific?

A. I would have to look at the records on that.

Q. Yes, look at the records. A. Sure.

Q. And I would like, also, if you please, to see whether you can get a copy, if you can't get the original of a deed to New Orleans, Texas & Mexico, of this property, if there is any such deed in existence?

Mr. McConaughy: Well, I think this is a fine time to be asking for that sort of material. That has been in the [recore] right straight along.

The Court: The Court suggested yesterday it might entertain a motion not to permit anything else to be called for that hadn't been called for up to that time.

Mr. Brandwen: If your Honor, please, this is an exhibit that has been put in here, that we have never put in. There may be other exhibits that may be put in that it may be important to question on. We have never in our material ever assumed that there was any advance for the acquisition of any property in Corpus Christi, and the witness himself says that the title to that property never went to New Orleans, Texas & Mexico. Am I correct there?

The Witness: I said that is what I thought.

Mr. Brandwen: Now, in the circumstances, if your Honor please, that if, for example, someone else got the property, I think it is important to know.

Mr. McConaughy: Why don't you ask him who got the property?

Q. (By Mr. Brandwen) Do you know who was the—to whom the property was conveyed?

A. I don't know who the property was conveyed to, but I know the railroad is using it.

Q. But you don't know who owns it legally?

A. I couldn't tell until I develop that.

Q. I see. Do you know whether any part of this property was sold? A. Yes.

Q. And by whom was it sold, do you know?

A. Sold by one of the companies down there.

Q. Sold by one of the companies?

A. Perhaps by Missouri Improvement Company.

Q. The Missouri Improvement Company is a wholly owned subsidiary of the Missouri Pacific Railroad Company? A. Yes, sir.

Mr. Brandwen: I think, if your Honor please, it is very important whether this is advanced by Missouri Pacific Railroad to Missouri Improvement Company for the purpose of buying some property, and I don't see how there can be a determination of this matter unless we get more information about it.

Mr. Kirschbaum: If the Court please, if counsel is to be permitted to go into this entire schedule, Exhibit 226, and examine in particularly with respect to each one of these items, we won't get finished here until next Christmas, and I doubt whether we will get done then. Here we are for the first time getting into something that seems pertient or relevant, as I see it, your Honor, and counsel has now picked certain items and is asking this witness to produce a deed to property on a transaction that happened twenty or twenty-five years ago, twenty-eight years ago, and to tell of his own knowledge whether he remembers specifically of a particular item, a particular transaction that occurred, when it is all down here, from a company, an official company business and records.

Mr. McConaughy: May I say a word, your Honor? That document about which Mr. Brandwen is inquiring is Exhibit 226, which has been in the record in these proceedings since 1935 or 1936.

The Court: What is before the Court?

Mr. McConaughy: Mr. Brandwen is asking the witness now at this late moment to get a deed.

The Court: That has all been before the Court.

Mr. McConaughy: And I object.

The Court: Sustained.

Mr. Brandwen: Exception.

Q. (By Mr. Brandwen) Have you yourself made a computation of the interest that has been charged on this Exhibit 226? A. I did not, sir.

Q. And you don't know, therefore, whether—you don't know, therefore, at what rates [interst] has been charged at various times? A. I do not.

Q. I call your attention to this item, Mr. Eckert, in the [schecule] 226; under the column "Interest paid" there appears, April 30, 1931, payment by New Orleans, Texas & Mexico of $249,917.00. I will show it to you, under interest paid. A. Yes.

Q. I now want to ask you a question with respect to that. Do you know under whose authority or by what authority that was credited to Interest Paid?

A. No, sir, I do not.

Q. And I want to call your attention, Mr. Eckert, to two items, one in Advances Repaid and one in Interest Repaid, on the same date. Do you see that? A. Yes.

Q. And on August 27, 1931, this Exhibit 226 indicates that $200,000.00 was repaid, of which $7,612.00 was applied on account of advances principal, and $192,388.00 on account of interest?

A. Counsel, I don't have that detail here, I couldn't tell you offhand what happened back there that long ago.

Q. I see. And you don't have, therefore, any information with respect to any of these other items dealing with repayment of principal and interest and the application of one amount to principal and another amount to interest or an amount only to interest, or by whose authority and under whose directions those allocations were made?

A. No, sir.

Q. You don't have any such information at all?

A. No, sir.

Q. Well, then, I will not ask you any more about this Exhibit 226.

Mr. Brandwen: And I am through with the witness.

Re-cross Examination,

By Mr. McConaughy:

Q. Mr. Eckert, will you look at 118 and 119 again, exhibits? I will just show it to you. What I want to ask you is, there are some items in there which go in originally as additions and betterments, isn't that right, not included originally as maintenance, but they represent originally A's and B's, isn't that right, in both of those exhibits? A. They are equipment trusts, yes.

Q. That would be? A. Yes.

Q. Any other items, any other types of items?

A. Materials and supplies might go into additions and betterments, and as I stated a while ago, there might be equipment rents allocated to R. & E.

Q. I am not speaking about that kind of an item.

A. You mean in the joint expenses?

Q. Yes, original A's and B's.

A. I don't think you would find any very material A and B charges in your joint expenses, most of it would be your regular operating cost.

Q. But there might be more under Material and Supplies?

A. And Material and Supplies and that equipment, yes.

Mr. McConaughy: I have no further cross examination.

Mr. Brandwen: That is all.

Mr. Kitchel: Does that close your case?

Mr. Brandwen: Yes, that closes the case. May I just ask one question of Mr. Kitchel, please?

The Court: One, yes.

Mr. Brandwen: I understand Mr. Stedman is in the courtroom. Does he plan to be here during the rest of the week, do you know, because there may be some question I would like to put to him?

Mr. Kitchel: I thought you closed your case.

[Mrl] Brandwen: I mean in connection with the Plan of Reorganization and the other objections.

Mr. [Mitchel]: I doubt that he will be here all week.

Mr. Brandwen: Not in connection with this inter-[complany] claim; on the plan. I just wanted to know if he is going to be here, that is all.

Mr. Kitchel: Well, I don't know.

The Court: Announce an adjournment until tomorrow morning at ten o'clock.

(At this point the Court announced an adjournment until tomorrow, Wednesday, January 17th, 1945, at 10:00 o'clock A. M., at which time the following proceedings were had, to-wit:)

Met, pursuant to adjournment as above, on January 17, 1945, whereupon the following proceedings were had:

The Court: You may proceed with the Missouri Pacific matter.

Mr. Kitchel: May it please the Court, yesterday afternoon Mr. Brandwen advised me that he would like to examine Mr. Stedman, Chairman of the Institutional Group, in connection with one of his objections other than Objection 19 which has been heard before Your Honor.

Mr. Stedman has been here for eight or nine days and is very anxious to get back on the job. With considerable difficulty, he has obtained a reservation on the twelve o'clock train today. I would suggest that Mr. Stedman be examined now on this other objection, or objections, that Mr. Brandwen had in mind, and then let him go, because, otherwise, I don't know when he will be able to get back.

The Court: Counsel are agreeable to that?

Mr. Brandwen: If Your Honor please, I have a serious objection to having any interruption of the proceedings with respect to the hearing on the claim. I think it is very important that that be kept intact. Furthermore, the testimony that I expect to elicit from Mr. Stedman will not be concluded by the time he leaves for the train. I have a number of questions in connection with the Plan

that I would like to inquire about, and I am quite sure that he would not be able to conclude that in time to make the train.

In view of the fact that Mr. Stedman is the Chairman of the principal proponent of the Plan, and in view of the fact that there are many questions in connection with the fairness and equity of the Plan, and in view of the fact that Mr. Stedman's ideas and information with respect to a number of aspects of the Plan will be very important on the question of fairness and equity, it would seem to me that he ought to be available for such reasonable time as may be necessary.

I am not able, I regret exceedingly, to acquiesce in Mr. Kitchel's suggestion.

Mr. Homire: As to this proceeding being a proceeding on the claim, the Court has ruled on that over and over again, and Mr. Brandwen keeps on insisting this is a hearing on the claim.

This is a hearing on objections to the Plan of Reorganization and a hearing on claims for equitable treatment. There was never any hearing noticed about the claim; there was never any order of this Court directing that such hearing be set down. It seems that counsel should be admonished to stop repeating that assertion, that this is a hearing on the claim, when everybody knows it is not.

Mr. Kitchel: In regard to Mr. Stedman, Mr. Brandwen says he wants to get Mr. Stedman's ideas. His ideas on the Plan are not relevant, so far as facts are concerned, and the mere fact that it would interrupt the hearing on Objection 19 for a little while is not going to hurt anybody. We can take that up immediately after that. I ask that Mr. Stedman be put on the stand now.

Mr. Kirshbaum: Mr. Brandwen made some remarks and it seems to me that he parenthetically injected the thought that he was not quite through. I understood he was to ask only one question, last Friday. He is still asking that one question.

I was hoping that this morning Your Honor was going to be prepared to listen to motions on the objections and

that we could then go forward with whatever business Your Honor had in mind, but I think it is out of order for counsel to infer that he is going to go ahead, or attempt to produce additional proof to support that same objection. Your Honor sat last night and held court until past five o'clock, to give counsel an opportunity to finish up. Now we hear that he has something else.

Mr. Brandwen: If Your Honor please, if the English language is not understood by counsel who just spoke, I am sorry.

Mr. Kirshbaum: I object to counsel's remarks as to what I understand about the English language. I will match my understanding of the English language with learned counsel. And I further object and except to counsel's long and protracted manner of the presentation of his claim.

I think he has imposed on Your Honor's grace. I think he has imposed on counsel who are here; I think he has imposed on the time of the Court, and on the estate, on the Trustee, on the President of this company, and on the Court.

Mr. Brandwen: I think, if Your Honor please, the record will speak for itself on each one of those points.

The Court: I think, Mr. Brandwen, that you should hear Mr. Stedman's statements and give him an opportunity. He has been here for some time, and I think we will meet the suggestion of counsel by putting him on at this time.

Mr. Brandwen: All I can say on that is that, if Mr. Stedman can not be here after twelve o'clock, I will forego the examination of Mr. Stedman at present. If he is back, I will take it up at that time. If he is not back, I will do the best I can in his absence. I want to make it perfectly clear that the material I want to ask Mr. Stedman about had nothing at all to with this inter-company claim. I thought I made that perfectly clear.

Mr. McConaughy, You are all through, Mr. Brandwen, are you?

Mr. Brandwen: Mr. Eckert was going to make up, at the request of counsel yesterday afternoon, some documents. He has brought one document in and I think the other has not been finished.

Mr. Homire: May I be heard at this time upon some suggestions that I think will be helpful to the procedure here?

The Court: Yes.

Mr. Homire: May it please the Court, in view of the manner in which this hearing has so far progressed, I have been giving some consideration to the question whether there is any method of procedure which would avoid delay in the consummation of this reorganization and allow it to progress while at the same time Comstock's contentions can be threshed out.

In view of the fact that the hearing on Comstock's Objection 19 (which objection is similar in all respects to the objections that are sought to be raised to the Missouri Pacific Railroad Company claim on promissory notes made by N. O. T. & M.) has now taken up more than a week of the Court's time and has resulted in frequent adjournments to enable Comstock's counsel to prepare his attempted proof, and has avoided utilization of the full time which the Court would normally sit each day, and in view of the fact that the methods of Comstock's counsel, if persisted in, whether or not calculated to block the reorganization, will nevertheless unnecessarily delay the reorganization, and in view of the further fact that Comstock's counsel has asked for a separate hearing on certain aspects of these matters, counsel for Reconstruction Finance Corporation now desires to move for the adoption of procedure to enable the Court to approve the Plan in all *other* respects (if it be so disposed) and allow certain of Comstock's objections to be considered separately.

It is apparent that there are several courses of action open to this Court, dependent upon the Court's view of various aspects of the case. These are as follows:

(1) The Court can overrule all objections to the Plan and approve it. This would involve a deter-

mination that Comstock's Objection 19 and related objections had failed for lack of proof or because barred by laches on his own showing or possibly on some other [graounds]. But it *might* be appealable, in that case, only on an appeal from an order approving the entire Plan itself, which would delay the whole Plan unnecessarily. (2) The second course of action that seems to be open would be for the Court to overrule all objections (if it be so advised) except Comstock's Objection 19 and related objections, and hold the Plan under advisement with an interlocutory opinion requesting the Interstate Commerce Commission to make and file a further supplemental report determining allocations in the alternative, dependent on whether this Court shall sustain or overrule Comstock's Objection 19 and related objections. (3) The third course which seems to be open would be for the Court to sustain any objection to the Plan including Comstock's Objection 19 and related objections (if the Court be so advised) and return the Plan generally to the Interstate Commerce Commission for further proceedings. In this event also the Court might well suggest to the Interstate Commerce Commission that in any supplemental report it include alternative allocations as described above.

In determining which of these alternatives is to be followed, we feel that the controlling consideration should be the expedition of the reorganization, consistent with the due protection and preservation of the rights of all parties in interest. From that standpoint our position is that either the second or the third of the foregoing alternatives should be adopted, and in the argument on the objections to the Plan other than Comstock's Objection 19 and related objections, we hope to convince the Court that the second alternative is the one which should be actually adopted.

In the first place, this procedure would be but an enlargement in the application of a principle which the Interstate Commerce Commission has already applied in part in its Third Supplemental Report.

In this connection, attention is called to the provision

of the Commission's Third Supplemental Report, page 20843 of the printed record.

Our suggestion is that on the Court's request the Commission, by a further supplemental report, shall make in the same manner further alternative allocations to meet the requirements of any ruling which this Court, or any appellate court, might hereafter make in the controversy which Comstock has raised in his objections on behalf of the Secured Serial 5¼% bonds.

This procedure, that is to say, the request for a further supplemental report by the Commission, has been approved in the case of the New Haven reorganization in the District Court for the District of Connecticut—(In re New York, New Haven & Hartford Railroad Company, Debtor, 54 F. Supp. 595, decided December 21, 1943). In the course of his opinion there Judge Hincks, District Judge, said on page 630:

> "* * * After studious review of the entire subject-matter, I can at least say that I am satisfied that the Plan in its entirety—with the corrections which are indicated in this opinion—should be approved.
>
> "The corrections, which I have indicated to eliminate what I conceived to be the unobserved impact of illegal standards and to reflect material changes occurring since the Plan came forward, since all based upon findings of the Commission and consistent with its limitations, are all, I believe, within the power of the judge to make. Likewise, as to the constructions which I have put upon the Plan."
>
> "But having in mind the thought that the task of the court is brigaded with that of the Commission, let me express the hope that our combined efforts may not suffer from the lack of suitable liaison at this critical stage in the proceedings. And to provide appropriate opportunity for such liaison I will say that if the Commission after reading my opinion shall wish, of its own motion, to file any supplemental report or order, whether adapted to confirm my proposed action or to require action in another direction, I shall be glad to shape my decree accordingly. The procedure which I have suggested looking toward a

possible disposition of the Bank claims I view as well adapted to facilitate and expedite the reorganization. But if the Commission shall have contrary views, I should welcome their counsel at the hearing which I expect will be held to consider any application by the trustees for authority to pay these claims in cash."

That case came before the Circuit Court of Appeals, and the Second Circuit ruled, under date of January 2, 1945, that Judge Hincks was entirely correct in his ruling on that question.

The Circuit bench, in this matter, was composed of Judge Swan, Judge Augustus N. Hand and Judge Jerome N. Frank, who at one time was very active in connection as Special Counsel for the Trustee in certain matters in connection with the Missouri Pacific.

Judge Swan in his opinion in the Circuit Court of Appeals, heartily endorsed the procedure which Judge Hincks had adopted. Judge Swan said this, in regard to the procedure which was adopted:

"Numerous appellants complain of the procedure adopted by the district court and the Interstate Commerce Commission with respect to the fourth and fifth supplemental reports of the Commission. Its fourth supplemental report was filed with the court on July 13, 1943. After hearings upon objections to the plan approved by the Commission in its fourth supplemental report the district judge filed an opinion, 54 F. Supp. 595, expressing his approval of it in general but stating that in a few particulars the plan did not comply with legal standards, and indicating certain corrections that should be made. The opinion also invited the Commission, if it saw fit, to file a further supplemental report while the judge was holding the matter under advisement. Acting upon this suggestion the Commission, without further public hearings, filed its fifth supplemental report on February 8, 1944. The court ordered that all objections to the fourth supplemental report should be treated as objections to the fifth, permitted the filing of additional

objections and, after hearing all objectors, rendered an opinion approving the plan, 54 F. Supp. 631, and made a formal order of approval.

"Appellants urge that upon the certification of a plan by the Commission to the court, section 77 (e), 11 USCA Section 205 (e), requires the judge either to approve it or to dismiss the proceedings or to refer them back to the Commission for further action. We do not think that the statute compels a procedure so inelastic. Subdivision (d) of the section provides that after public hearings the Commission may either approve or refuse to approve any plan, and 'may thereafter, upon petition for good cause shown filed within sixty days of the date of its order, and upon further hearings if the Commission shall deem necessary, in a supplemental report and order modify any plan which it has approved, stating the reasons for such modification'. Under this provision we can not doubt that until the court has acted upon the plan certified to it, the Commission has power, upon the timely petition of a party in interest or upon its own motion, to clarify, perfect or modify the plan on the basis of evidence already before it and without further hearings, if it deems such hearings unnecessary. Nor has the Commission doubted its power to render on its own motion a supplemental report modifying a plan previously certified to the court.

"In the case at bar the court took under advisement the plan of the Commission's fourth supplemental report; it had entered no order of approval or disapproval before the fifth supplemental report was received. The fact that the court wrote an opinion inviting the filing of a fifth supplemental report and suggesting certain corrections in the plan of the fourth report certainly did not deprive the Commission of its statutory power under subdivision (d) to improve the plan by a supplementary report. We regard it as a commendable instance of 'properly coordinated action' between the court and the Commission, the importance of which was noted in Ecker v. Western Pacific R. Corporation, 318 U. S. 448, 475."

In the second place, it is our position that the procedure suggested in the second of the foregoing alternative procedural proposals is entirely consistent with the due protection and preservation of the rights of all parties in interest who are affected by the controversy which we have referred to. It is quite apparent that the Secured Serial 5¼% claim for equitable treatment, if ultimately held to be sound, can be met by placing in escrow an amount of the securities allocable to the various junior creditors affected by the controversy sufficient to satisfy their claims as ultimately determined. The securities so placed in escrow would later be disposed of by order of the Court, after the controversy has been litigated and determined. Meanwhile, the plan of reorganization—in so far as it affects the other security holders, who, after all, are entitled to the great mass of the new securities and who have waited so many years for the settlement of their claims—can go forward. Thus the public interest, which demands—as the Supreme Court has stated more than once—a prompt reorganization of these great railroad properties, can be preserved, or at worst not be subjected to further injury by delay. We submit that if, as we contend, this controversy among the junior creditors can be severed from the rest of the reorganization, a great public interest will be served and a great step forward will be made in disposing of this prolonged and expensive reorganization litigation."

The procedure that we have suggested is consistent with a type of procedure which counsel for Comstock advocated.

It seems to me that Mr. Brandwen has continuously confused the question of separate trial at this time of the claim of the Missouri Pacific vs. the N. O. T. & M., as a separate matter, as a claim in bankruptcy. He has confused that with a claim for equitable treatment under the Plan of Reorganization based upon his Objection 19 and related objections. To a certain extent, the issues overlap—I think they overlap almost entirely, but Mr. Brandwen's continuous mistake has been in attempting to distort this proceeding into a proceeding on the claim, which, of course, it is not.

But I think much of what he desires to accomplish would be accomplished by separating this controversy from the rest of the Plan, or the comments and objections—

The Court: Does that contemplate any change in the method of hearing the case?

Mr. Homire: I have one or two more words of explanation, and then I have written out a form that I will hand Your Honor, so you can follow it precisely, exactly what I suggest.

The procedure I suggest would permit of separate findings of fact and conclusions of law and a separate order disposing of the controversy raised by Comstock's Objection 19 and his related objections.

If this procedure meets with the approval of the Court, it will now be in order to proceed with the hearing of objections to the Plan (other than Objection 19 and related objections raised by Comstock), which would be dealt with as we have suggested in the foregoing.

Following the conclusion of those matters, the separate hearing on Comstock's Objection 19 and related objections would be resumed, so that no delay would be involved.

Upon the conclusion of the hearing of all objections of the parties the question of approval of the Plan would be taken under advisement by this Court and an interim or interlocutory opinion could be written, inviting Interstate Commerce Commission to make a supplemental report of the character previously described. In the meantime, the hearing on the Plan generally would be adjourned at the conclusion of arguments here at this time, to a later date, pending receipt of the Commission's further supplemental report.

With those words of explanation, which I hope have not been unduly extended, and with one further reference that Rule 42 (b) of the Rules of Civil Procedure is the basis upon which my motion is made—all Rules of Civil Procedure are made applicable to bankruptcy proceedings, by General Order 37, so far as they are consistent with the proceedings otherwise described by the Act.

My motion, which I have here written out—and I would like to present a copy of it to Your Honor—is as follows:

"Accordingly, on the entire record and proceedings heretofore had in this Court and in the Interstate Commerce Commission in these proceedings, I now move, on behalf of Reconstruction Finance Corporation, as follows:

(1) That hearing on Comstock's Objection 19 and related objections, to the extent that they are dependent on Objection 19, and his claim for equitable treatment based thereon (said related objections being numbered 1, 2, 3, 4, 5, 6, 7, 8, 13, and 26) be separated from hearings on all other objections and claims for equitable treatment, and that they be heard separately from other objections filed by Comstock and separately from objections filed by other parties, all pursuant to Rule 42 (b) of the Rules of Civil Procedure, which Rules are made applicable to proceedings in bankruptcy by General Order #37;

(2) That this Court proceed to hear all objections to the Plan which are not included in Comstock's Objection 19 and related objections, to the extent that they are not dependent on Objection 19.

(3) That this Court defer further hearings of any evidence on Comstock's Objection 19 and related objections, as above defined in Subdivision (1) of this motion, until after hearing on objections not included in Comstock's Objection 19 and related objections as defined as aforesaid; and

(4) That this Court, at an appropriate time, if it be so disposed, and in order to co-ordinate its function with that of the Interstate Commerce Commission at this critical stage of these proceedings, invite the said Commission to issue such further supplemental report as this Court and the Commission may deem appropriate or necessary to provide for such alternative allocations of securities as may be required to meet the necessities of any ruling which this Court or any appellate court vested with power to review these proceedings may hereafter make in respect of the controversy raised by Comstock's claim for equitable treatment of the Missouri Pacific Secured Serial 5¼% Bonds, based on his Objection 19 and related objections, as defined as aforesaid."

The Court: The first paragraph of your motion is pretty much along the line of Mr. Brandwen's own request.

Mr. Homire: I think it does accomplish what he apparently wants to accomplish. In view of the manner in which the case is proceeding, it seems to me that to a degree that ought to be done, but where I differ from Mr. Comstock is in this respect: I maintain that this proceeding that we have been concerned with since January 8th is a hearing on objections to a plan. It is not a hearing on a claim in bankruptcy. Now, that claim in bankruptcy may have a bearing on the Secured Serial 5¼% claim for equitable treatment, but the notice is perfectly plain. This hearing is held pursuant to notice and order of court. It is a hearing on the Plan. There has never been any notice on this matter.

Mr. Kitchel: At the opening of the proceeding Mr. Brandwen moved that the hearing on the claim filed with the Special Master be heard as a separate proceeding. I objected to that and called the Court's attention to the fact that this was an objection to the Plan, and insisted that it should be heard as such. As to Mr. Homire's motion, if his motion is granted, it still would be a hearing on objections to the Plan. One of those objections would be in a little subdivision, in a separate hearing, but that would still be an objection to the Plan, and my position is not inconsistent with the position I first took. I join in the motion Mr. Homire has made in behalf of the Reconstruction Finance Corporation.

The Court: Mr. Kitchel, have you any recommendation as to which of these alternatives should be followed?

Mr. Kitchel: It shapes itself in my mind in this fashion: If Your Honor, after hearing all the objections, except Objection 19, should come to the conclusion that you should overrule all those objections, the theory of Mr. Homire is that then you could write a little opinion stating that you approved the Plan in general, and inviting the Commission to make its alternative allocations of securities. On the other hand, if Your Honor determines that the objections are valid objections then, of course, Your Honor would write an opinion stating the Plan was objectionable and would have to be sent back, but at the same time you can make an invitation for the same alternative allocations to be put in the next report.

Of course, our preference would be that you should find the Plan generally approved, with the exception of this thing, and then invite the Commission accordingly. But I don't wish to foreclose Your Honor from finding that some of these objections are sound, if they should be so.

Mr. Kirshbaum: May I say to the Court that I most respectfully except and object and oppose the motion made here this morning by Mr. Homire. I have no copy of the motion papers, so I haven't had any time to examine or consider the motion, but from the reading of it, as given to Your Honor this morning—

The Court: If you want to read it first, I have another matter to take up and I will give you an opportunity to read it.

We will take a recess.

(After the recess the hearing was resumed as follows:)

Mr. Kirschbaum: Your Honor, I have read this motion which Mr. Homire has handed me, and I must respectfully state to the court that I object to the motion as presented for the following reasons:

In the first place, your Honor, the granting of this motion at this late date would not simplify the hearings, but would only confuse them. The Circuit Court of Appeals of this District, as I understand it, has ruled that Comstock is not entitled to any separate hearing, nor to any stay of these particular hearings on objections to the plan, in order to have his claims heard, and I therefore feel that this court is, to that extent, bound not to further postpone the hearing, or to—

The Court: How is the Court of Appeals to decide that?

Mr. Kirschbaum: I understand, your Honor, they ask for a stay of these hearings on objections to the plan in order that they may have a separate hearing on their claim, and to that extent I understand that the Circuit Court of Appeals denied the motion. Now, if it please the court, your Honor very patiently sat through for eight days listning to Mr. Comstock's claim, and yesterday your Honor will recall that they rested, they are finished so far as that claim is concerned, and it is now proposed, if

it please the Court, to sever this hearing to the extent that Mr. Comstock's claim may be heard in futuro, at some later date. Now, I have no objection, and it is perfectly true, and it is the law so far as I understand it, as announced here by the Circuit Court of Appeals for the Second Circuit in the New York, New Haven & Hartford case, which I told your Honor about in the early stage of this hearing, that your Honor is quite within his province in calling upon the Interstate Commerce Commission for advisory opinions at any time, or supplemental opinions. It is quite true, as Mr. Homire told your Honor, that the courts consider that that is the finest kind of cooperation between the Interstate Commerce Commission and this court; and it is quite true that your Honor may at any stage, as to any manner, ask for such opinions. But I respectfully submit to your Honor that it is not proper to, by this form of order, put, so to speak, words into the mouth of the court that an alternative allocation of securities may be desirable. I think it is, in a manner of speaking, to prejudge this case and claim. I think the evidence, so far as adduced here, shows that the Comstock claim is antiquated, has no possible legal significance, and should be thrown out. I feel that the court will throw it out. I feel that the claimants here have failed to make out any valid objections to that extent. I feel that after the evidence that your Honor has listened to, the evidence adduced here by Mr. Baldwin and particularly by Mr. Thompson, the Trustee, which so clearly shows how carefully the alleged claim of the N. O. T. & M., was examined, how carefully and studiously it was followed and pursued, I feel as one of those who participated in this hearing, and I know I speak for several others, that that entire matter at that point, upon the completion of Mr. Thompson's testimony, satisfies us that there was no legal basis at all for the assertion of any such claim.

I say further to the court that it was the province of Mr. Comstock to come forward here and prove a claim, instead of going, as I told your Honor he would go, on a fishing excursion and a fishing expedition to search out facts, feeling his way as he went along, trying to find out where there may be weaknesses, where possible irregu-

larities or corrections in bookkeeping and what not. I say to your Honor that is all water under the bridge. The claim has been heard, it is finished. Why should we at this late stage now afford a further opportunity and further burden the court with needless repetition of facts and figures and recitals of such facts and figures, all of which are already in the record?

The Court: I can't help think that you misconstrue the effect of the motion if it should be sustained. I don't think it means what you think it does.

Mr. Kirschbaum: Perhaps not, your Honor.

The Court: It is directed more to the effect on the appeal than anything else, isn't it?

Mr. Homire: Yes, your Honor, I think Mr. Kirschbaum understands the purpose and effect of this motion.

The Court: I think he did, or I did, either one, misunderstood it.

Mr. Homire: I am sure your Honor did not. I think Mr. Kirschbaum misunderstood. We don't intimate an expression of views on the merits of this controversy, and by asking that this procedure be adopted—of course, we are not saying there is any merit in the controversy or in the position of the secured 5¼% bond holders. The point is that they have been taking up all this time, and even though a claim may be wholly lacking in merit, if they are allowed certain latitude of activity they can go ahead and carry this thing on for, I don't know how long, and while it is true, as I understand it, if Mr. Kirschbaum is correct, they have finished for the present, there is always the question of the affirmative case, which the opponents might wish to put in, and also the question of rebuttal testimony; and I suppose that could be drawn out in extent the same as the original case was drawn out.

Mr. Kirschbaum: I say this, your Honor is going to have to hear this at one time. Now, you have allocated this time, I should think now would be the time to get rid of this matter.

Mr. Homire: Furthermore, your Honor, there would be no waste of time that has been already absorbed, because the record made would, of course, be transferred to the separate hearing and would stand just as it has been presented. And we are not asking, nobody is asking here for an adjournment at all. It is just a question of which objections your Honor feels now could be best heard first; and we think that these separate objections, or rather these Comstock objections which I have described, are separable and they could now well be severed from the main proceedings, and allow the other objections to be heard.

Mr. Kirschbaum: It is my thought, your Honor, your Honor had more or less outlined the procedure at the beginning of the hearing, as to how your Honor would conduct it. If your Honor will recall, he would ask these to be heard with respect to these objections, to be heard, and your Honor will recall it was preferred first to be heard with respect to the disposition of this particular claim.

The Court: That is my recollection.

Mr. Kitchel: In that respect, I doubt whether your Honor would decide the claims from the bench, I think your Honor would take some little time to pass on the validity of the claim. And there is no reason why, pending that time, we should not hear the other objections.

Mr. McEwen: If your Honor please, I want to say I am not one of the counsel just referred to.

Mr. Kirschbaum: I did not want to wait until your Honor had rendered a decision. I merely wanted to wait until I had heard the evidence to be produced by Mr. Brandwen with respect to Objection 19, and nothing else. And now that I have heard that I am quite prepared to go forward with the argument on my own objections to the plan, either at this moment or at any time your Honor sees fit to hear them; and I therefore respectfully suggest that counsel agree with me now, as I understood them to agree with me during the recess, that questions as to the

form of the order to be entered upon this motion now in your Honor's hands, be reserved for an informal settlement of the order to be made by your Honor thereon.

Mr. Homire: Part of it would—I believe this procedure would accomplish it exactly to meet the situation in which Mr. McEwen finds himself; that is, to allow him to be heard so he can go home if he wants to. He is not interested in this controversy.

Mr. Brandwen: If your Honor please, at the risk of repeating what I have said on several occasions, and what I have tried to make as clear as I humanly could, not only at the session which began these proceedings on January 8th, but prior hearings before your Honor, that I wanted to have the validity of this claim, inter-company claim, determined. Whatever terminology may be employed there is no magic in the terminology. In the last analysis we are dealing with something that has a basis in substance, and that is, is the claim asserted by Missouri Pacific for advances against New Orleans, Texas & Mexico valid, or isn't it valid? And no amount of terminology and no amount of verbal magic is going to transmute the character of the problem in any fashion. It is that basically, fundamentally, and it is the only way in which the problem can be kept clearly in mind. I recognized the fundamental character of the problem at an early stage, I tried to make that as clear as I possibly could. I pleaded with your Honor to have it separated so as to avoid this very thing. Now, if I had said, "This is what may happen." People might have said to me, "Well, you are reckoning with certain facts that have not yet taken place." I was fearful of it. The last time I tried to do that was at the hearing, the session on the morning of January 8th. I don't think there was any doubt in anybody's mind, certainly, when we were up before the Circuit Court of Appeals, and on this point I want to state that there have been statements made as to what the effect of the Circuit Court of Appeals decision on that day was, that I don't subscribe to, but I don't think it is necessary for me to labor that point at the moment. It was clearly understood that when the procedure was

worked out here finally, and my application for the procedure to be adopted was overruled, there was one thing that was completely clear, and that is that the validity of this claim would be determined. That is, I wanted the party that asserted the claim to go forward, because it was my position that legally the burden of proof, the burden of going forward was on that party. Your Honor overruled my application on that point, and I went on. Now, the evidence is in. When they speak of our coming in at the last minute, when envisaging the possibility that this kind of confusion might arise in the course of the proceedings, that there might be a great difficulty in keeping the issues segregated, I did all that I could in advance to avoid that. Now, if these people felt this way, why does this feeling, and this thought, and this decision come, not at the fifty-ninth minute of the eleventh hour, but after the twelve o'clock bell has struck? Why after the case is in does it all of a sudden dawn on these gentlemen that it might be a good plan to wait awhile before the case, if there is any kind of case, is submitted in opposition to the material which we have brought forward? Can it possibly be that after some digestion of the material that has been submitted there is grave concern in their minds that perhaps we really have made out a very good case, showing the claim to be invalid, and, if you will, there isn't the fortitude necessary at the moment to go forward and oppose it? Can that possibly have occurred to them? Because I find it very difficult to understand why, since they have been here all of this time, nothing has developed during the past—yesterday, or Friday, or Monday, or Tuesday, or Wednesday, or Thursday, which might not have made the application which has been submitted by these gentlemen to your Honor at this moment which could not have been submitted at that time? But there is one very important difference, and that very important difference is that our case has been put in.

I think, if your Honor please, that if your Honor does not require whoever wants to go forward has a right to be heard, I think, and I say this with the utmost respect, if your Honor please, we will have been injured very seriously. I believe we were injured in that we were

obliged to do what we did; but there will be a piling up of additional injury if, after having gone through with all the travail connected with the presentation of this material, if these gentlemen are permitted in their own sweet time to go forward with the answer, or the material they may have in opposition to the testimony that has already been adduced, I think it would violate all procedure, all requirements of orderly and sound procedure. And, if your Honor please, I should object to it completely. I was afraid at all times, and I so stated on every occasion when I had an opportunity of making that statement, that I was afraid that something might happen, the precise form I could not outline, that there would be some last-minute plan, some Deus ex machina, if you will, at the last minute, that would be pulled out, so that this matter would not be put in a position where your Honor could have the entire case on the validity or invalidity of the claim, for consideration and determination.

I don't think, if your Honor please, it is right for them to do that. I don't think it is fair, and we have heard so much talk about the length of time it has been taking to get this claim heard. We have got to that point where at least our case has been put in. Let us finish it and be done with, so that no one else will have to hear about this claim again. And the effect of this is simply to make this difficult, if not impossible, of accomplishment; and certainly to delay it more. There is no reason why—we have been pressed to go on, we have done everything we humanly could. I have no feeling with respect to people who make comments on the testimony that has been adduced, because unless people have sat down and examined the nature of the material in the documents, as well as the testimony that has been adduced, no one can be in a position no matter what gifts or talents that person may be endowed with, to make any comment with respect to the effect or significance of that material, until he has read it, studied it and pondered it well. And certainly very few people in this room have had an opportunity of doing it.

Now, I say, therefore, that as a matter of proper procedure, as a matter of carrying out, if your Honor please,

something that was agreed upon, that I understand was agreed upon as proper procedure, something I labor under by reason of what was stated at the opening session, I think to have this change made not the next day, but made after all our material is in, I think, is not the most appropriate thing to do. And when I say not the most appropriate, I am using—

The Court: What is the particular hardship upon you, Mr. Brandwen, if the motion should be sustained?

Mr. Brandwen: If your Honor please, I think we have a right to have this claim determined. Now, why can't they go forward? Why can't they submit their testimony and have this completed? After all, if your Honor please, there are two distinct tasks that—I say that with deference and respect when I speak of tasks—tasks that your Honor is faced with, as the District Judge in these proceedings, and they are two separate and distinct tasks. The performance of one does not render academic the performance of the other. The fact that one has an impact on the other does not and should not obscure the fact that they are two separate and distinct tasks. One, if your Honor please, is the determination of the validity of claims against the estate. That is a separate and distinct task that has to be done, has to be performed. That is one of the bases for my argument I have made on a number of occasions for a separate hearing.

The other, if your Honor please, is the question of the determination of the fairness and equity of the plan. But whether a plan is ever submitted to your Honor, or the nature of the plan, or whatever your Honor does with respect to a particular plan, the fact remains that the task which your Honor is confronted with, of determining the validity of a claim still remains, and it is because I felt that no one can say at this moment what the fate of this plan or of any other plan that may be submitted may be, I felt it was very important to keep those two issues distinct and separate, so you could have this matter determined.

Now, it is suggested, and I didn't know anything at all about this, until I heard Mr. Homire speak this morning,

that certain things be done by the Interstate Commerce Commission, with the Interstate Commerce Commission, certain suggestions be made, certain representations be made to the Interstate Commerce Commission. How, when, where, and the details of that have not been made clear. It may be premature; that the matter of the continuance of this be deferred. What is the reason? We can save much more time in having all this testimony submitted to your Honor. It is fresh. We can go right on and have it finished. A great deal of time can be saved thereby. And since when one proceeds with respect to the trial of an issue like this, when all the facts were known—there was not a single thing developed by Mr. Homire in his statement this morning, and I say this respectfully of Mr. Homire, that was not true, Friday, or Monday, or Tuesday, or Wednesday of last week. Why, then, do they wait until after the case is finished?

Mr. Homire: The reason for that was, your Honor, I didn't want to interrupt him yesterday, he was going ahead, and we had been waiting so long, I thought as long as we seemed to be approaching the end we might as well let him finish. We are not asking the affirmative case be deferred at all. As I understand it, Mr. McConaughy is entirely ready to go ahead, and it is not necessary to defer that by merely separating this controversy from the main hearing on the plan.

The Court: The purpose being that on appeal that would determine their—

Mr. Homire: To have a separate appealable order so far as this order affects the allocation—

The Court: You are not attempting to change the course of the order of procedure here?

Mr. Homire: I did suggest this, I did suggest it might be possible to defer a further hearing, so that people like Mr. McEwen could go ahead, that is all.

Mr. Brandwen: If your Honor please, if I understand that is all that is involved; namely, an opportunity for Mr. McEwen to present his statement of objections, and I assume that would not take any longer—

Mr. Kitchel: And Mr. Pierce, also.

Mr. Brandwen: And Mr. Pierce.

Mr. Kirschbaum: Your Honor, I asked your Honor at the beginning to reserve time to be able to meet rebuttal remarks on the claim.

The Court: I recall that.

Mr. Brandwen: I will say this, that if, for example, they would like some time to go on with that, and I am not attempting to limit anybody—

The Court: I thought you gained a different impression. It is a long thing, I wanted to be sure I got it all.

Mr. Brandwen: If all the gentlemen want is a brief interruption—

The Court: I didn't see anything to keep him from closing up the hearing on this Objection 19 at this time, and taking it under submission and disposing of it all. It is only the question about the separate appeals, is that it?

Mr. Brandwen: Well, if your Honor please, on the question of keeping this hearing on the claim—I repeat, it is on the claim, not going into the question of terminology, so that we describe what we are dealing with. If that is kept separate, and there are separate findings, conclusions of law, of course, that is something I requested in the early stages, and I am delighted to find approval of the suggestion, even though at this late hour, by these gentlemen.

The Court: I suggested when Mr. Homire first submitted the motion, it seemed to me, from the first paragraph I read, it is along the lines you, yourself, had been contending for.

Mr. Brandwen: Yes. And to that extent I say I am delighted to get approval of my position, even though it is a belated approval.

Now, I say that if, for example, it is understood that for the convenience of certain other counsel in this court room who would like to be heard on their aspects of the plan today, if, for example, it won't interrupt this long, as a

convenience to the court I am perfectly willing to do that, but I assume we are not dealing, and again I say I am not asking any one to limit himself by reason of this request, all I say is that if I am correct in understanding that all we are dealing with is a short interruption, I would raise no objection thereto, because I think that is the way in which we can serve the court.

The Court: Is there a misunderstanding from any counsel?

Mr. McEwen: Yes, if your Honor please, I am quite unwilling to accept Mr. Brandwen's condescension. My objections are quite as important as his, and I am unwilling at his hands to accept out of the richness of his time a few moments. I am going to ask at such time as may be appropriate that your Honor may hear me for an hour, and I would not want it to be said that that had been extended to me out of courtesy or consideration of counsel by Mr. Brandwen.

The Court: There will be no question about you being accorded an hour to make your argument.

Mr. Brandwen: Your Honor, I want to say that, I want to make it perfectly clear I have not made any comment or any suggestion that would in any way be to limit the time of anybody else, and I am sorry Mr. McEwen so understood. All I want to say is this, that if that was the understanding of the others, I have no objection. I only want to ask what is the understanding so there won't be any question about that. I want to repeat that so far as I am concerned, and this is not a matter that I am acting in a condescending manner with respect to, I am simply stating my position, that I have nothing to say about that, but I certainly have a right to say whether I understand a certain matter correctly.

The Court: The court understood that also.

Mr. Pierce: Your Honor, I merely want to inquire with respect to the defendants, who will probably argue only one objection to the plan, if counsel will then be permitted

to hear the reply of the objectors to his objection, or whether we will wait then until this further evidence is presented, and then these gentlemen who may properly be called the present proponents of the Commission's plan, will go ahead. It is purely a matter of what procedure you intend to follow.

Mr. Kitchel: My suggestion on that, your Honor, is that we hear these other objections, including Mr. Brandwen's objections, which are not embraced in these nineteen, and then that counsel supporting the plan should answer those objections. I will say at the time that my answer to those objections, which I think are all futile, is not going to be a very extended argument, then to take up Objection 19 again in the separate hearing. I propose to move to dismiss. I don't think there is anything in the claim, we are not frightened about it, as Mr. Brandwen has sort of intimated. I am going to move to dismiss it on the ground of laches. And then, if that motion is denied we are ready to go ahead with our affirmative proof.

I might say, however, in that connection, that Mr. Wyer, who is one of our important witnesses is running a railroad in New Jersey, and he has got to leave tonight. We will put on all other witnesses, but after their testimony is in we would have to ask for an adjournment. I want to be frank with the court on that. We will go ahead with our other witnesses, but we will have to ask for an adjournment until we get Mr. Wyer.

Mr. Brandwen: If your Honor please, I think if Mr. Kitchel has any motion to make with respect to the dismissal of our objections to the claim, I don't see why he can't make a motion at the present time. There is no further evidence that we are putting in.

Secondly, I think that, if your Honor please, orderly procedure suggests that, dealing with ourselves alone, only, why we cannot have the evidence go forward by the other parties with respect to the inter-company claim before we go on with the other objections that we have to the plan, because our other objections to the plan are going to be fairly extensive, our testimony, and it will take considerable time.

The Court: The motion will be sustained, and the court will proceed to hear all of the number two suggestions.

Mr. Brandwen: I take exception to that.

* * * * * * *

The Court: What is the next?

Mr. Kitchel: Do I understand, Your Honor, that the question of objections has now been completed, except that 19?

The Court: That is what I was inquiring.

Mr. Brandwen: Your Honor, there are certain schedules we are trying to get from the trust estate, that we are not going to have any testimony on. There are just a few schedules, and there is no reason why we may not be able to have them here tomorrow, and there is no reason why we have to have any witnesses in connection with it at all; we can just offer them after they are produced by the trust estate. They are just a few schedules, that is all.

The Court: Will that be the end of your objections?

Mr. Brandwen: I am not going to go any further with respect to objections, with the understanding, of course, that all of the objections relating to the 5-¼s that are dealt with in the proposed order, if not submitted now, may be dealt with in another fashion. That is the reason why I am not going into them, because that was the statement made by Mr. Homire yesterday morning, so that I understand I am not going to go into them at all on that understanding. The only other thing I have, I say, are these few schedules, that is all.

The Court: Mr. Kirshbaum?

Mr. Kirshbaum: I am just curious to know whether it is the Court's intention to proceed with this severed hearing of Mr. Brandwen's, or whether it was to be adjourned to some future date, or whether it was concluded at this point, or upon introduction of these schedules, or what procedure Your Honor was going to adopt with reference to this severed hearing?

Mr. Kitchel: I shall have a motion to make in that matter, Your Honor.

The Court: In the morning or now?

Mr. Kitchel: It will take me some little time.

The Court: Would you care to discuss that in the morning?

Mr. Kitchel: I beg your pardon?

The Court: That will be taken up in the morning.

Mr. Kitchel: This order may be taken up in the morning.

The Court: This order of Mr. Homire's. There is nothing else this afternoon then?

Mr. ————: This question of the Allegheny.

Mr. Leisure: If this is a proper time, and since Mr. Brandwen's contention that the Comstock objections 20 to 23 inclusive may involve the taking of testimony and not merely argument, I should like at this time to move the Court that the Court set down Comstock's objections 20 to 23 for separate hearing. This would be similar to the separate hearing of Comstock's objection 19 ordered by the Court yesterday, but separate from it.

Mr. Brandwen: That will be quite agreeable to us, if it meets with Your Honor's approval.

The Court: Any suggestions as to time on that?

Mr. Leisure: I will have a motion to make tomorrow, if Your Honor pleases, and I will follow Mr. Kitchel, if he is going to make one, then we can determine that, I think, tomorrow morning.

The Court: The Court will reserve its ruling on this, then. I say the Court will reserve its ruling on this at this time, then. That is what you desire, is it not?

Mr. Leisure: No. I think if Your Honor cares to rule on this at this time, I would be very happy to have that ruled on.

The Court: Might we determine as to time?

Mr. Brandwen: Perfectly agreeable, practically any time you can agree upon. No problem with that.

The Court: Maybe counsel can agree on a time.

Mr. Brandwen: Then I think best to wait until tomorrow.

The Court: That motion will be sustained then, that they be set down for a separate hearing—the Comstock objections 20 to 23, and counsel may try to agree upon a time, if possible.

Mr. Kitchel: Then, Your Honor, in this objection 19 separate hearing, there will be an adjournment of that, I take it, and at the same time we can agree on some time when that should be brought on.

Mr. Brandwen: I really had hoped and I really wanted very much to have that matter concluded, since so much effort has already been spent on it, and the matter is fresh in Your Honor's mind, instead of having that matter adjourned. I really would like very much to have that matter disposed of—there has been so much trouble about it, there have been suggestions on the amount of time it has been taking, and I would like very much to have that disposed of, and I am ready to have it go on, I mean have them go on with the presentation of their testimony and have the matter concluded. That would be my very strong preference. There has been such a suggestion of urgency of time every day that we have been here, that I should like to have the matter concluded.

Mr. Kitchel: I will be ready tomorrow morning, Your Honor, to make a motion to dismiss—overrule the objections to the 19, and I am obliged to leave town tomorrow afternoon, on account of some personal considerations. We can settle those things in the morning, I imagine.

The Court: You may announce an adjournment until tomorrow morning at ten o'clock.

At this point, an adjournment was had until 10:00 A. M., Friday, January 19, 1945.

Met, pursuant to adjournment as above, on January 19, 1945, at ten o'clock A.M., at which time the following proceedings were had:

The Court: You may proceed with the Missouri Pacific matter.

Mr. Homire: If Your Honor please, it may be that the first order of business should be to take up the settlement of the order which was submitted on the 17th. I think it would be proper to date that order the 17th, which was the date the Court sustained the motion.

Mr. Kirshbaum: If the Court please, I wish Your Honor would, before considering Mr. Homire's application on this order, consider the motion which Mr. Kitchel said he was going to make this morning, for the reason that if the motion of Mr. Kitchel should be granted, and myself, because I also intend to join in that motion, I think then this order would become unnecessary. For example, the fourth paragraph I think will probably be at least changed, and may be eliminated. So this order may become in a great measure academic, if Mr. Kitchel's motion or my motion, should be granted to dismiss Mr. Comstock's objections. Therefore, if it please the Court, I ask Your Honor to hold this matter in abeyance, at least until after you hear Mr. Kitchel or my application to dismiss.

Mr. Homire: Paragraph 4 of the proposed order, that Mr. Kirshbaum referred to, is nothing more than a reservation of jurisdiction, and it seems to me—

The Court: I think that is all I saw.

Mr. Homire:—it doesn't operate until Your Honor sees fit to, if the reservation of jurisdiction—

Mr. Kirschbaum: I thought if the objection should be stricken, as I feel it will be after argument of counsel, then this order becomes unnecessary.
I will defer to Mr. Kitchel.

The Court: Is it your desire to be heard first, Mr. Kitchel?

Mr. Brandwen: I don't quite understand all this talk as to what is up right now. Mr. Homire referred a question

to Your Honor, and then there is colloquy of counsel here, off the record. I don't know what it is about.

The Court: Mr. Homire suggested that perhaps we could settle the order first. Mr. Kirshbaum asked that that be deferred until we heard Mr. Kitchel's motion.

Mr. Brandwen: Is that the order of procedure, that it is to wait until Mr. Kitchel makes his motion?

The Court: I am waiting to see.

Mr. Brandwen: I didn't know. I didn't want to be in default.

Mr. Kirshbaum: If Mr. Kitchel will not proceed with his motion, may I make my motion at this time, to strike?

The Court: Very well.

Mr. Kirshbaum: I move, if it please the Court, to dismiss, and ask the Court to strike out Objection 19 and related Objections numbered 1, 2, 3, 4, 5, 6, 7, 8, 13 and 26, and the claim for equitable treatment based thereon, on the following grounds:

1. That this objectant is not the proper legal party to assert said objection.

This objectant does not state that he represents the Trustee of the New Orleans, Texas & Mexico in presenting this claim, nor has he obtained a prior order of this Court permitting him to do so; nor has he obtained the consent of the Trustee of the New Orleans, Texas & Mexico to bring, or assert this claim, which by law this objectant is obliged to do as a prerequisite. He does not, by his own admission, stand here in this Court in any representative capacity for all New Orleans, Texas & Mexico stockholders.

I respectfully call to Your Honor's attention the decision which was handed down in this case by the Circuit Court of Appeals. A number of parties interested in this proceeding attempted to appeal from a decision of this Court which determined to refuse to pay the Reconstruction Finance Corporation loan, and it is my recollection in this case that the Court of Appeals said that these parties in this proceeding had no interest in that appeal, because the only one who had an interest in it was the Trustee.

So I say to Your Honor that, on the ground that this party is not the proper legal party to assert this objection, this claim or objection must be dismissed. Unless this objectant obtains these prerequisites he has no standing in this Court. Otherwise, Your Honor can very well see how Your Honor would be constantly besieged by a multiplicity and multitude of claimants coming in and claiming to represent this stockholder, or that or the other interest, and coming forward at all times with a number of claims.

I may call to Your Honor's attention that this same claim has been before this Court twice, once on behalf of some so-called Beard Committee, and now it crops up in the form of Comstock. Who knows, if this claim be adversely determined, that this man may not be here again, or some other attorney may be here again asserting this claim for somebody?

I say to Your Honor that orderly procedure requires that a prior order of this Court, giving permission to bring or assert such claim, must be obtained, or the consent of the Trustee must be obtained, and the remedy, if any, must be had against the Trustee.

I move to dismiss and strike out these claims on the ground that this objectant has mistaken his remedy. The alleged objection which this objectant asserts is in reality a claim and not an objection which, if legal, should have been asserted, or may be asserted against the Trustee in a final or a separate accounting.

Before that claim may be asserted against the Trustee, this objectant or claimant must observe and must conform to the provisions of law and to the decisions mentioned in the first ground on which I have moved to dismiss this objection and claim.

3. This objectant has no legal interest in this claim. The objectant purchased his securities in 1942, years after the allowance of the claim against the New Orleans, Texas & Mexico, and he has therefore failed to show his good faith in the presentation of said claim. He has failed to show that as to him, as an individual, he has been damaged in any way or has sustained any loss as a result of his investment or speculation.

I move, sir, on the further ground, to dismiss and to strike out these objections, that the objectant is guilty of

laches, that the time within which this objectant should have applied to the Court with reference to that claim is long past due, and this claimant is therefore barred from asserting that claim for those reasons.

I move you to strike that claim and that objection on the ground that this objectant has acquiesced in the allowance of the claim as a matter of law. I say, that he has acquiesced in the allowance of this claim, as a matter of law.

This objectant has affirmatively established, by his own witness, Guy Thompson, Trustee of the Missouri Pacific Railroad, whom he called as a witness, that he knew the merits or the demerits of the Missouri Pacific claim against the N.O.T. & M. as long ago as 1935; that he was then given an opportunity to contest the claim, and that he made no objection thereto at any time until now. Security holders of the Missouri Pacific, and those who bought securities of the Missouri Pacific after the allowance of the claim, have obtained as the result thereof certain vested property rights. The previous determination of the Trustee of the Missouri Pacific to allow that claim can not now be upset by this objectant, because to do so would be to deprive those Missouri Pacific stockholders and security holders of vested property rights, which they obtained since the allowance of the claim, all without due process of law and without just compensation. You are taking away certain rights which they became entitled to as a result of that determination.

I further move to dismiss the claim and strike it out, on the ground that the evidence adduced here upon the claim failed to make out a case.

Besides the separate grounds for dismissal and striking out, which I have enumerated here, I now ask that these objections be stricken on the ground that the evidence sought to be adduced by the objectant's witnesses covered transactions of the Debtor which occurred thirty-two years ago. Under the ancient document ruling, such transactions can not be disturbed or questioned in any way. Any oral evidence sought to be elicited thereon, or any inference of improper conduct sought to be drawn from evidence that old is legally incompetent. The objectant has failed to make out a claim by clear competent proof.

I therefore ask that Objection No. 19, and the related objections should be stricken out.

Thank you.

Mr. Kitchel: Your Honor, I should first like to move, in order to do away with any misunderstanding, that there be on the record in this separate hearing on Claim 19 and related claims, the entire record in this proceeding from its inception, both before this Court, in the Interstate Commerce Commission and in the Court of Appeals.

I think it is properly in this case. This is a hearing on objections to the Plan, and it is properly a part of the record. I so move.

The Court: Sustained.

Mr. Brandwen: Your Honor, I should like to say, if Your Honor please, that I object to this application on the part of Mr. Kitchel, unless he limits it to those portions of the record and prior proceedings that have a relevant or material bearing on the issues presented in the controversy in connection with the inter-company claim.

Mr. Kitchel: The whole record would be before the Court. Counsel can pick out such portions as are relevant and, of course, if there is any appeal only those portions would be made in the record that goes up.

But for the purpose of this, the whole record is in?

The Court: Yes.

Mr. Brandwen: Exception.

Mr. Kitchel: In the second place, I have two rather related motions, the first of which is the following:

I move to strike out all the testimony and evidence heretofore given and produced in connection with the hearing on Comstock Objection 19 and related objections, to the extent that they are dependent upon Comstock Objection 19 and his claim for equitable treatment in that connection.

This testimony and evidence could, and should have been produced before the Interstate Commerce Commission before it closed its last hearing, in October, 1943. My authority for this contention has already been stated to the Court by Mr. Leisure in the motion which he made, I

think, on the first day of this hearing, on January 8th, on his motion to dismiss the objection so far as related to Alleghany. At that time he cited, and I now cite, a ruling made by Judge Hincks in the New Haven reorganization, at the hearing when additional evidence was attempted to be offered. The matter I am quoting appears in Volume 13, pages 8587-9 of the Printed Court Record in that New Haven case.

There, some people, Sartorious and Ganz, moved, upon the hearing of approval of the plan—and now I quote:

"The Sartorious and Ganz motions to be heard * * * and though counsel who now press this motion seeking permission at this late stage to offer proof that the claimant is entitled to certain security, was present at the hearings heretofore had before the Interstate Commerce Commission on the Plan * * * clearly it will frustrate all progress in matters such as those * * * to wait until after the Commission has reported a plan upon the assumption that a claim is unsecured and then for the first time seek an adjudication upon a claim of security belatedly raised."

Again, Mr. Leisure cited, and I now cite, a ruling of Judge Davis of this Court, in the matter of St. Louis-Southwestern Railroad Company, Debtor, No. 8497. This ruling was made on October 27, 1942, after argument by counsel on the question whether there would be admitted at the hearing by the Court on the approval of the plan previously approved by the Interstate Commerce Commission any additional evidence on matters heard and determined by the Interstate Commerce Commission.

On page 206 of the minutes the following appears:

"The Court: Additional evidence on matters heard and determined by the Commission will not be admitted on this hearing. All testimony and evidence submitted on this hearing will be confined to matters occurring subsequently to the consideration of the Plan by the Commission."

On those authorities, I move to strike out the testimony that was heretofore had on this separate hearing.

Now I move to overrule Objection 19 and the related objections, to the extent that they are dependent upon

Objection 19 and the related claim for equitable treatment, on the ground of laches, and in support of that motion I submit an affidavit of Mr. Railey, which enumerates the death of a number of parties who were formerly connected with the Texas Lines and the Missouri Pacific. I put this in affidavit form to save the time of the Court. Mr. Railey is in Court.

I have given a copy of this affidavit to opposing counsel, and if they so desire, they may cross-examine Mr. Railey.

Mr. Brandwen: If the Court please, Mr. Kitchel in the court-room this morning, handed me a copy of this affidavit. It was the first time I saw it. I will cross-examine Mr. Railey.

Mr. Kitchel: I think that would be appropriate, before I start my argument, Your Honor.

THOMAS T. RAILEY,

being called for cross examination by Mr. Brandwen, testified as follows:

Q. Mr. Railey, please state your name and address to the reporter.

A. Thomas T. Railey; St. Louis, Missouri.

Q. And what is your occupation?

A. I am Assistant Counsel for the Trustee of the Missouri Pacific Railroad Company, and subsidiary Debtors.

Q. How long have you been associated with the Missouri Pacific Railroad and/or its subsidiaries?

A. I have been in the General Solicitor's office since 1915.

Q. During the period from 1915 to 1944 you have performed a miscellaneous variety of legal activities?

A. Yes. Most of that period I was Assistant Counsel for the Trustee.

Q. You were what?

A. Assistant General Solicitor, I should say.

Q. During the course of these twenty-nine years you have been generally familiar with the legal matters that

have arisen in connection with the Missouri Pacific and its related roads?

A. With certain of them. I would not say all of them, by any means.

Q. I don't suppose with all of them, but with a great number of them? A. Correct.

Q. Please, Mr. Railey, give us the circumstances leading to the preparation of this affidavit which has been submitted this morning.

A. Mr. Kitchel asked me if I would not prepare an affidavit in line with the testimony I gave here on the stand at the presentation of one of your motions, about a month or more ago.

Q. About a month or more ago?

A. Yes. I undertook to put in affidavit form the testimony I gave at that time.

Q. You state in the early part of your affidavit, on the first page, that you are familiar with the issues raised in connection with the objections of Mr. Comstock, bearing on the inter-company claim? A. Yes.

Q. You are familiar with the issues? A. Yes.

Q. You are familiar with the facts connected therewith?

A. To a limited degree.

Q. You have made a very careful examination, have you not, of the facts and issues in connection with the objections to the inter-company claim, within recent months?

A. I have read your exceptions to the Plan. I have refreshed my memory, to some extent, as to what took place previously before the Interstate Commerce Commission, in connection with the Plan and particularly with this issue—

Q. With what?

A. The issue that you have, the inter-corporate claim. I have read portions of the Wheeler Committee Report that was attached to one of your motions, together with some of the testimony that was offered before that Committee, and I have talked to some of our employees. To that extent, I am familiar with it.

Q. You have been in attendance at practically all the hearings that have taken place since the morning of January 8th, have you not? A. Yes, sir.

Q. What employees have you talked with?

A. I have talked with employees of the Missouri Pacific and the New Orleans, Texas & Mexico.

Q. What employees did you talk with?

A. I talked with Mr. Eckert, with Mr. Peet, and I have talked with some of the mechanical people.

Q. You have talked with some of the mechanical people?

A. Yes, sir.

Q. You mean, mechanics?

A. People who had supervision over engine hire, and matters of that kind.

Q. Whom have you talked with about those matters?

A. I have talked with Mr. Christie and Mr. Rogers very briefly, and I have talked with Mr. Kirkpatrick, of our Texas Lines, and I have talked to Mr. Brown, and perhaps others. I don't recall now.

Q. Did you talk with Mr. Wyer? A. No, I have not.

Q. You have not talked with Mr. Wyer?

A. I haven't gone over the facts in this case at all with Mr. Wyer. I have spoken with him, and sat down at a table with him the other day at the restaurant, but I haven't gone over the facts with him.

Q. You haven't talked, on a number of occasions, with Mr. Wyer about the issues in this case? A. No, I have not.

Q. You have not? A. No.

Q. Have you talked with any of counsel for the First and Refunding Committee?

A. Yes, to the extent of telling them where they can find certain witnesses, or certain information.

Q. They asked you where certain witnesses could be found. Did they give you the names of the witnesses they wanted?

A. No. I told them where they could find certain information.

Q. How did you happen to tell them that?

A. In response to their request.

Q. What was the nature of the information that they asked you about?

Mr. Kitchel: I object. The only testimony that Mr. Railey has given here in his affidavit is as to the death of certain parties. It is not proper cross examination.

Mr. Brandwen: If Your Honor please, one of the basic features here, one of the [basis] problems—and I don't want to anticipate myself at the moment, because I am going into this question later in the morning, or today—deals with the relationship of employees and members of the staff in connection with this inter-company claim. I think it is very important to have that clear, for everybody's sake.

Mr. Kitchel: That is no reason why he should ask him who he talked with.

The Court: Objection sustained.

Mr. Brandwen: Exception.

Q. You say you talked with Mr. Christie: Mr. Christie is who?

A. Mr. Christie is one of our mechanical men, and about all that I have gone over with him is to introduce him to Mr. McConaughy, and let them discuss the question of engine hire as they saw fit. I haven't sat in on those conferences.

Q. Is Mr. Christie connected with the N. O. T. & M. at Houston?

A. He was at the time of the transaction in question.

Q. Now he is in St. Louis?

A. Now he is connected with the Missouri Pacific.

Q. In St. Louis? A. Yes.

Q. Mr. Rogers, who is he?

A. The same thing is true with respect to Mr. Rogers. He was with the Texas Lines and is now with the Missouri Pacific.

Q. Also interested in mechanical matters?

A. Yes. I introduced him to Mr. McConaughy, and I haven't sat in on their conference.

Q. And Mr. Kirkpatrick, is he connected with the Missouri Pacific or the N. O. T. & M.?

A. Mr. Kirkpatrick is connected with the New Orleans, Texas & Mexico.

Q. And his offices are in Houston? A. Yes.

Q. He was here the other day? A. Yes, sir.

Q. Do you know who sent for him?

A. I can explain why he came here. At the time this matter was set it was anticipated that possibly Mr. Baldwin might be called as a witness, and he would refresh his memory on some things. Mr. Kirkpatrick was called in for that purpose.

Q. You don't know who called Mr. Kirkpatrick?

A. Mr. Vollmer.

Q. How long had Mr. Kirkpatrick been here?

A. He got here a day or two before the hearing, and he has been here during part of the hearing. I don't know whether he is gone now or not.

Q. He also deals with matters of mechanics?

A. He is more familiar with the conditions of the road.

Q. Physical conditions of the road?

A. Physical conditions of the road.

Q. And Mr. Brown?

A. Mr. Brown was formerly the Chief Traffic Officer of the Missouri Pacific, now retired.

Q. Did you hear any testimony with respect to engine hire, in connection with this inter-company claim? A. No.

Q. You didn't? A. No.

Q. Nothing of that kind was introduced, or adduced?

A. You mean at this hearing, in the last two weeks?

Q. Yes. A. No.

Q. None at all? A. No.

Q. You say you talked with Mr. Eckert: What did you talk with Mr. Eckert about?

A. I have talked with Mr. Eckert briefly about some of your allegations in your petition. I have looked at the comparative balance sheet that you prepared, but I haven't gone into any of the details with Mr. Eckert.

Q. You didn't discuss the figures or facts contained in any of the schedules?

A. Not enough to form any independent judgment.

Q. Did you discuss with him the figures and financial facts contained in any exhibits?

A. So casually that I would not be able to tell you what I have discussed.

Q. Have you examined the exhibits that have been introduced in evidence here in these proceedings?

A. I have examined some of them. We had them photostated, and I looked at them casually.

Q. Did you study them? A. I looked at them casually.

Q. Casually? A. Yes, sir.

Q. Did you look at all of them? A. I doubt that.

Q. Did you examine the minutes that were offered in evidence? A. No, I haven't.

Q. So you do not know, at the moment, what is contained in the minutes that were offered in evidence?

A. No, I do not.

Q. You do not know? A. No.

Q. You do not know who was present at the meeting—at the meetings of which minutes were introduced in evidence here?

A. I heard the testimony and you have brought out on several occasions the members of the Board who were present. Outside of that, I don't recall.

Q. So that we understand, Mr. Railey, from you—and I want to get this completely clear and straight—that you, yourself, have not examined either the minutes or the excerpts from the minutes that have been introduced in evidence here?

A. No, I don't believe I have. I may have looked at a few of them, but I don't even recall the substance of those.

Q. Except for a reference that may have been made in oral testimony you, therefore, do not know who was present at any of the meetings from which extracts of minutes were produced; is that correct?

A. I have a general knowledge of the members—some of the members of the Board of Directors, but I can't answer your question directly.

Q. But you would not know, from your general knowledge or your general recollection, who may have been present at a particular meeting, when particular action was taken, would you?

A. No. I have, for example, in mind reading a letter about Mr. Frank Andrews being present at a meeting.

Q. About his being present at a meeting?

A. About his being present at a meeting, but just an occasional matter of that kind has come to my attention. I have not examined the minutes to ascertain who was present.

Q. Will you let us know whether there were any minutes introduced in evidence here, of Board of Directors

or Executive Committee of the New Orleans, Texas & Mexico, at which it was suggested or stated that Mr. Frank Andrews was present?

A. I can't tell from the—

Mr. Kitchel: The record speaks for itself.

Mr. Brandwen: One of the purposes is to question the credibility of this witness. This witness made some very—

The Court: He may answer.

A. I think I recall in the files a letter that Mr. Andrews was present, or at least that he was a member of the Board of Directors, and had approved the resolution passing the dividends for the three million and a half from the Brownsville, in 1931, I believe it was.

Mr. Brandwen: Q. You, yourself, do not know whether any evidence was offered that Mr. Andrews approved or disapproved any resolution bearing on that dividend, do you?

A. A letter was attached to one of your motions, to that effect, and is referred to in your petition—to your objection. I don't recall whether it was offered in evidence or not. I rather believe it was one of the letters you had photostated, but I am not sure of that.

Q. You had a number of exhibits photostated in the office of the Missouri Pacific, had you not? A. Yes.

Q. You said before that you simply looked at them casually?

A. Rather casually. For instance, with the comparative balance sheet, I looked to see how the surplus was running.

Q. Which comparative balance sheet?

A. Of the New Orleans, and the St. Louis, Brownsville and Mexico Railway Company.

Q. For what period?

A. For the period about 1924 to 1933, I think they ran.

Q. You say you wanted to determine what?

A. I was curious to see how the surplus showed up on those balance sheets.

Q. What was your interest therein?

A. General interest in this case.

Q. General interest in this case. You say here that certain individuals might be in a position to offer substantial testimony on one or more of the issues involved in said controversy? A. Yes.

Q. The first one you mentioned is Mr. William H. Williams: He was Chairman of the Board of the Missouri Pacific and N. O. T. & M., prior to May, 1930?

A. That is correct.

Q. You say in this affidavit that Mr. Williams presided over certain Board of Directors and Executive Committee meetings, extracts of which have been offered in evidence, respecting the transactions in question. I ask you to name any meeting, from your own knowledge, of any Board of Directors or Executive Committee of the Missouri Pacific and/or New Orleans, Texas & Mexico at which Mr. Williams presided.

A. I understood you to so state on the record when you were reading some of the minutes of the meetings. I haven't, as I stated, examined those minutes personally. I may be in error in that, but I understood you to so state. He was Chairman of the Board and I naturally presume that he would be present at some of those meetings.

Q. You assume that because he was Chairman of the Board of the Missouri Pacific and the N. O. T. & M. that he would be present?

A. And I recall, if I am not mistaken, that you stated in the record, that he was present.

Q. You state here that if living he would be in a position to offer substantial testimony on one or more of the issues: Now I ask you whether you know, whether there is any issue presented in any of the excerpts from the minutes that have been introduced in evidence—that Mr. Williams was present at any of those meetings.

Mr. Kitchel: Your Honor, I object. Counsel brought out the fact that Mr. Williams was Chairman and was present at some of the meetings—

Mr. Brandwen: You mean me?

Mr. Kitchel: —and that mere fact that he was presiding at some of the meetings would show that he had knowl-

edge of what was presented at that meeting, and it seems to me that is sufficient.

Mr. Brandwen: If Your Honor please, when Mr. Bailey, who was acting as Assistant Counsel to the Trustee, submits this kind of affidavit, where he says that Mr. Williams, if living, would be in a position to offer substantial testimony on one or more of the issues involved, and that he presided over certain of the Directors and Executive Committee meetings of the Missouri Pacific and the New Orleans, Texas & Mexico, extracts of which have been offered in evidence, respecting the transactions in question, certainly an affidavit made by a lawyer, and by an Assistant Counsel to the Trustee, that is simply based on a suggestion made in the course of this testimony, that he may or may not have been present at one of those meetings, is certainly no basis for this kind of statement in a sworn affidavit. I think it is a very serious matter.

Mr. Kirshbaum: I object to counsel's argument. I think counsel should be confined to the examination of the witness. I ask that those remarks be stricken.

The Court: Overruled.

Mr. Brandwen: Q. I ask you this question: Can you state now whether there was any meeting, any meeting at all of the Board of Directors or Executive Committee of the Missouri Pacific or New Orleans, Texas & Mexico, from which excerpts were introduced in evidence here, at which Mr. Williams presided? A. I think so.

Q. You don't know whether there was one such meeting or more?

A. That statement, Mr. Brandwen, goes further [then] merely presiding at Board meetings. Mr. Williams was Chairman of the Board. You have some allegations in your objections to the Plan, that there was an over-reaching by the Missouri Pacific [——] New Orleans, Texas & Mexico. Mr. Williams, as Chairman of the Board, would be the man who would be largely responsible for any financial policies of the Missouri Pacific. All that I meant to bring out in my affidavit was that Mr. Williams is dead, and to the extent that either parties might desire his testimony on those questions, he is not available. He was

Chairman of the Board. He undoubtedly had a good deal to do with the policies of the Board, but I haven't had a sufficient interest in this matter to check each of these Board of Directors minutes to see whether he was or was not present.

Q. That is not what you stated in your affidavit. You stated Mr. Williams presided over certain Board of Directors—

Mr. Kirshbaum: I object to counsel arguing with the witness. I ask that counsel confine his talk to questions.

The Court: Overruled.

Mr. Brandwen: Q. Have you a copy of your affidavit before you? A. No, I do not.

Q. When you stated—

(At this point Mr. Kitchel handed to the witness a copy of the affidavit.)

Mr. Brandwen: Q. When you stated that Mr. Williams presided over certain Board of Directors and Executive Committee meetings, extracts of which have been offered in evidence, respecting the transaction in question, you meant something quite different from that; is that what we are to understand?

A. No, I can't say that I do. I have told you the source of my information. If it is not accurate I am sorry. But as Chairman of the Board, I have no doubt that he presided over meetings, and I haven't examined the minutes of particular meetings that you have offered in evidence, but his name has been mentioned in connection with those, and I assume that he presided over them.

Q. You don't know how many meetings his name was mentioned in connection with?

A. No. That can be checked.

Q. But you don't know? A. No, I don't.

Q. And you didn't know when you executed this affidavit—

The Court: I think you have gone far enough on that.

Mr. Kitchel: If Mr. Brandwen is curious, I refer him to Comstock Exhibits 91, 92, 93, 94, 95 and 96, being minutes

of various Board meetings and Executive meetings at which Mr. William H. Williams is recited as being present; also Exhibits 98 and 99, and 97 and 104. I want to refresh his recollection.

Mr. Brandwen: I have a recollection of those. I was not the one who submitted the affidavit. I think that is most irregular. I didn't submit this affidavit, Mr. Railey submitted it. I know what is in the record. I want to know, when Mr. Railey submits an affidavit, that he knows—not what is in evidence. If Mr. Railey doesn't know about that, that is the thing that is important. There can be no question about the soundness of what I said.

Mr. Kitchel did not submit the affidavit, or Mr. McConaughy.

Q. I ask you this question: You state that if Mr. O. P. Van Sweringen were alive, he would be in a position to offer substantial testimony. He was the Chairman of the Board of Directors of said companies after Mr. Williams. Do you know whether any minutes of meetings were offered, or excerpts, at which Mr. Van Sweringen presided?

A. I do not recall that any minutes were offered, although he may not have been Chairman of some of those meetings. He was Chairman only a limited period before the reorganization proceedings; I believe, May, 1930—

Q. He was Chairman for only a limited period?

A. Yes, and of course had comparatively little to do, as the dividends were not paid after 1931, and he did not take office until May, 1930, but he did direct the financial policy of the Missouri Pacific and to that extent he was involved very definitely in your exceptions to the Plan.

Q. In what? A. In your exceptions to the Plan.

Q. How so?

A. You take the position that the Missouri Pacific, through its officers, took undue advantage of the N. O. T. & M. and operated it for their financial gain. If that is true, Mr. Van Sweringen was the head of the Missouri Pacific in so far as financial matters were concerned. I don't know to what extent you intend to go into that, or that the other parties may go into it, but it is conceivable that Mr. Van Sweringen's testimony would be relevant, if he were living.

Q. In what way would it be relevant on the question as to whether advances were made by the Missouri Pacific to the New Orleans, Texas & Mexico?

Mr. Kitchel: I object to that. This case is not finished. We may have a number of things to put in which Mr. Van Sweringen and these other witnesses—

Mr. Brandwen: As I understand, the motion to dismiss is being made now.

Mr. Kitchel: It is not granted yet.

Mr. Brandwen: If Mr. Kitchel, by his remarks, would like to have this motion deferred until after the other testimony that Mr. Kitchel wants to put in, I have no objection, but it is being made now, and if it is being made now it is being made on a state of facts that exist.

The Court: Proceed.

A. I can only surmise, from your exceptions to the Plan, that you are charging the Missouri Pacific as overreaching and operating the N. O. T. & M. for the benefit of the Missouri Pacific. If that was done, Mr. Van Sweringen, as Chairman of the Board, would probably have had a voice in that action. Whether either of you would desire to take his testimony and determine the extent to which he had a voice in that matter, I do not know, but I can readily conceive of his testimony being relevant.

Mr. Brandwen: Q. Now let me ask you this; let us deal with some of the matters that have been adduced in these hearings. Have you ever examined the cash books of the Missouri Pacific or the New Orleans, Texas & Mexico?

A. Not enough to carry anything in my mind.

Q. Do you know whether the cash books reflected advances of Missouri Pacific to the New Orleans, Texas & Mexico?

Mr. Kirshbaum: I object to the question. I believe the cash books would be the best evidence of that. I believe it is improper cross examination.

The Court: Objection sustained.

Mr. Brandwen: May I make this comment as an explana-

tion of why? I am not trying to prove by this witness anything that is contained in the cash books. I am just trying to question the credibility and weight to be given to this witness's affidavit. That is all I am trying to do.

The Court: Proceed.

Mr. Brandwen: Q. The advances from Missouri Pacific to New Orleans, Texas & Mexico are matters of record, are they not? A. Yes.

Q. They are matters of record? A. Presumably so.

Q. Dividends paid by New Orleans, Texas & Mexico are matters of record, are they not? A. Yes.

Q. We have full books of accounting, original entries on that, have we not? A. Yes, sir.

Q. Surplus items are matters of record, are they not?

A. They are matters of record, but you go into controversies that you have raised here which would affect the amount of that surplus, and those controversies which go back as far as 1916, of course involve records—I don't know to what extent, and I have not seen those records myself and, of course, can not attempt to testify as to what they contain.

Q. So you are not in a position to say that the items of surplus are not fully recorded in journal entries, books of account, balance sheets—

Mr. Kitchel: I object to this line of questioning. It is irrelevant.

The Court: Sustained.

Mr. Brandwen: Exception.

Q. Would Mr. Safford be in a position to testify with respect to financial matters?

A. Mr. Safford was the Chief Executive officer of the Texas Lines, reporting, of course, to Mr. Baldwin, who had general charge over them. He was undoubtedly well informed on most of the questions that you have raised, and the facts that would be involved, and I would say "Yes".

Q. You are not questioning Mr. Eckert's familiarity or knowledge of all these transactions?

A. Not in the least, but Mr. Safford was not an accounting man. Mr. Safford's testimony would be particularly valuable to cover the same matters, in more detail, that he covered at the hearings before the Commission, namely, the condition of the property, the alleged diversion of traffic.

Q. You mean physical condition, when you say that?

A. Yes, physical condition.

Q. I didn't mean to interrupt you.

A. (Continuing) He would also know why dividends were paid, for example, by the Brownsville to the New Orleans, Texas & Mexico. He would know whether, in cutting wages of employees and economizing, in response to a letter written to Mr. Baldwin, how far he could safely go without in any way impairing the stock interest in the railroad. He would be the best witness who would be available, if living, to cover those questions.

Q. Primarily, the physical conditions of the property?

A. He would undoubtedly be the best witness on that question. He would also be an important witness on other questions, or, at least, it is conceivable that he would.

Q. You said before, Mr. Eckert had full knowledge, and has full knowledge, of all the financial and auditing matters?

Mr. Kirschbaum: I object. The witness has already answered the question. Any further questions by counsel will not serve any useful purpose.

The Court: Sustained.

Mr. Brandwen: Q. Now, you mentioned Mr. Cannon, Mr. J. Cannon? A. Yes.

Q. You say here that, if living, his testimony might be of value in explaining operating arrangements between the Gulf Coast Lines and Missouri Pacific.

A. On those, I assume that Mr. Cannon would probably be less necessary, or his testimony could be more easily supplied by other witnesses, because he was located on the Missouri Pacific and not on the Gulf Coast Lines, but I have read in your exceptions that the Texas Lines were operated for the advantage of the Missouri Pacific, and with respect to the alleged diversion of traffic, or matters

of economic operation, Mr. Cannon might or might not become an important witness.

Q. Have you heard any testimony on that subject?

A. No, sir, I haven't, but Mr. Cannon sat in a conference that I happened to attend, at the time of consideration of the motion for the appointment of a separate trustee, which involved the same questions—Mr. Cannon was well informed on some of the matters that were discussed there. It is for that reason that I mention his name here as a possible witness, who has since died.

Q. Now Mr. F. P. Johnson. Let us deal with Mr. Johnson. What could he have testified to, in your opinion, that would constitute substantial testimony here?

A. Mr. Johnson was Chief Financial and Accounting Officer for both the Missouri Pacific and the Texas Lines. He was the man to whom Mr. Eckert testified he went occasionally for instructions. Mr. Johnson had charge of the Missouri Pacific books. One of his letters was attempted to be read and objected to by Mr. Eckert explaining the adjustment of certain accounts—

Q. What accounts?

A. You had an alleged advancement of Missouri Pacific of something over $1,200,000., that you asked Mr. Eckert about, and Mr. Johnson, before he died, had explained that matter in a memorandum, or letter, that was in his files, that you called Mr. Eckert's attention to the journal entry which, I assume, from what you said, did not agree with the explanation Mr. Johnson had made in his letter. In a matter of that kind Mr. Johnson's testimony would be of great importance. Mr. Johnson, I have no doubt, handled some of these matters with the Interstate Commerce Commission, where there was some substantial readjustment. I am not positive that they were handled directly with Mr. Johnson, but he was undoubtedly in on those conferences.

Q. Do you know of any matter that was handled by the Interstate Commerce Commission with Mr. Johnson?

A. I am not sure whether any of the letters were written to Mr. Johnson, that you referred to, or written direct to Mr. Eckert, but I have no doubt that there were several conferences between Eckert and Johnson.

Q. You only say you have no doubt, because you assume that was the practice?

A. Because I know that was the general practice. I operated very closely with Mr. Johnson and I know how he handled matters.

Q. Mr. Johnson's offices were in St. Louis? A. Yes.

Q. Now, you mention Mr. L. A. David. That deals with condition of equipment and engine hire? A. Yes.

Q. Have you heard any testimony on that subject?

A. No, I have not heard any testimony on that subject, but the matter is referred to in your exceptions and I have assumed that before this hearing is over that some testimony of that kind would probably creep into the case.

Q. But up to the present there has been none offered?

A. That is correct.

Q. So, his testimony on that, so far as the present situation is concerned—

The Witness: I make this further explanation as to how I happened to know what Mr. David might know on this subject. At the time we had the conference considering the motion to appoint a separate trustee, filed by the Walker Committee back in 1917—1937, Mr. David was the man best informed on this question and was the man then expected to take the witness-stand if it should become necessary to put him on the stand.

Q. On the condition of equipment and engine hire?

A. Yes.

Q. You mentioned Mr. Booth: What testimony might he have offered?

A. Mr. Booth was one of the oldest employees of the Texas Lines; he had been with them all his life, and was Chief Traffic Officer of those lines, and would have an intimate knowledge of whether those lines had been deprived of revenue by diversion of traffic, or whether there had been any improper division or adjustment of division that would prejudice or impair the stock of the Texas Lines, and to that extent his testimony, if available, would be beneficial.

Q. When you speak of "improper division", would you clarify that a little?

A. I mean any undue reduction of the division that the Texas Lines were receiving, particularly from the Missouri Pacific after the Missouri Pacific took over the Texas Lines.

Q. You mean, the division of freight?

A. I mean division of freight revenue and passenger revenue, but particularly freight.

Q. You referred to Mr. White: He was General Solicitor?

A. Mr. White was General Solicitor from 1915 until the time of his death, in 1935. He was directly connected with the Missouri Pacific and not with the Texas Lines, and would have a rather restricted knowledge of the questions involved here, but it is conceivable that he would have some information that would be desired by one or both parties. Like Mr. Cannon, I frankly confess that the necessity of him being present is nothing like as imperative as the necessity for men like Mr. Johnson and others who handled the Texas matters.

Q. Who are the others whom you include with Mr. Johnson? A. Well, Mr. Frank Andrews.

Q. Do you say that Mr. Johnson and Mr. Andrews are the most important?

A. It depends on the particular issues. Mr. Safford was probably the most important of all. Mr. Johnson was here in St. Louis, as were Mr. Cannon and Mr. White, and as between the three of them, I would say that Mr. Johnson's testimony would be much more essential than either Mr. White or Mr. Cannon.

Q. Mr. Johnson would testify on what specific issues?

A. Mr. Johnson would testify on matters of accounting, on the accounts and why the accounts were handled in certain ways. He was the Chief Accounting officer; had vast experience in that respect, and was very decided in his opinions.

Q. I think you once testified that the Accounting Department of the Missouri Pacific is a very large department? A. That is correct.

Q. Having employees numbering perhaps as many as a thousand?

A. I believe I said over a thousand, but I don't recall.

Q. That still is a very large department, having employees of such amount?

A. Yes, we have—if I may explain briefly—the general office accounts, the general accounts such as you have been referring to here; and then we have separate divisions of the accounting department, such as Auditor of Freight Receipts, Auditor of Passenger Receipts, Auditor of Station Accounts, and different divisions of the accounting department that specialize in particular matters that may not be directly involved in this proceeding.

Q. I wonder whether you wouldn't explain and clarify a little more fully what you would have expected Mr. Safford to testify to.

Mr. Kitchel: I object to that. There have been letters put in evidence from Mr. Baldwin to Mr. Safford asking about certain things, and it doesn't make any difference what this witness—

Mr. Kirschbaum: We join in the objection that the question has been fully answered.

The Court: Sustained.

Mr. Brandwen: Exception.

Q. What would Mr. Niven, general officer of Missouri Pacific, how would his testimony affect this matter?

A. I imagine Mr. Niven—I mentioned Mr. Niven and Mr. Huntsman casually, Mr. Niven was Mr. Johnson's assistant, just as Mr. Peet is today Mr. Eckert's assistant, and it is conceivable I might have been on some of these transactions, but I know of none personally, and only mentioned his name casually. Mr. Huntsman was vice-president and assistant treasurer and secretary in New York, and his name, I believe, was mentioned once or twice during these proceedings, and I therefore added it here rather casually. I don't know to what extent he would be an essential witness. Probably all he could testify to could be covered by Mr. Wyer and other witnesses that were in the New York office.

Q. May I ask you one further question. Did you have anything at all to do with the preparation of Comstock's proof of claim, identified as Exhibit No. 1?

Mr. Kitchel: I object to that, your Honor. It is not proper cross examination.

The Court: Objection sustained.

Mr. Brandwen: Exception.

That is all.

(Witness excused)

Mr. Kitchel: Now, my motion to dismiss, or rather to overrule the objection and claim for equitable treatment, so far as it deals with Objection No. 19, is based on the following. In the first place, the transactions complained of occurred during the period 1924 to 1932. That is to say, from eighteen to twelve years ago. This proceeding under Section 77 was started in March, 1933. Trustees were appointed in that year. In the year, I think, 1935, Mr. Thompson on the stand testified that he held a conference with the various counsel who were interested in this proceeding, and when Mr. Brandwen was present. At that conference there was discussion as to various irregularities, or rather the discussion was as to whether there were any irregularities. Some things were discussed at length, and at the conclusion of the controversy Thompson asked whether anybody had any other points to raise of irregularity, and none was mentioned except the two that were under discussion, two or three that were under discussion.

In March, 1936, the records of this court will show that the Trustee filed a motion stating that he had discovered no irregularities, except one or two therein specified, and suggesting that request be made of the Interstate Commerce Commission for any information they had as to irregularities. Request was made, and no result from the Commission. That motion and order were matters of record, common knowledge, could be ascertained by any one interested in this case.

In 1936 and 1937, during the hearings before the Interstate Commerce Commission on the proposed plans then pending, the question of these advances was testified to at length. Referring to the transcript of testimony before the Interstate Commerce Commission, Mr. Wyer, in Volume 3, pages 529 to 538, gave direct testimony in regard

to the advances made, and my recollection is that it was at that time that he put in the Exhibit No. 226, which has been discussed in this case already, later on, being cross examination, in Volume 20, pages 3367 to 77, he testified as to what the advances were spent for, what the money was spent for; controversy continuing in Volume 21, pages 3583 to 3592, he testified that these advances were not used for the payment of dividends, but for expenditures for betterments and improvements. All through that period there was a great deal of testimony as to various points as to which evidence has not been given here, but points which are raised in Comstock's specifications of objections as to diversion of traffic and a number of things that are specified in subdivision "J" of his specifications, beginning on page 18 of his specifications—of his objections. Testimony of that was given at length, and the matter thoroughly threshed out.

Again, in 1937, a motion was made by either the New Orleans, Texas & Mexico committee, or the trustee under that mortgage, or both of them jointly, for a separate trusteeship, and there again the question of these advances was spread on the record at great length.

In January of 1940, the Interstate Commerce Commission handed down its report approving the original plan, and I am reading from what is known as the "Submission Book," that is to say the papers that were submitted to voters on the submission of that plan; on page 46 of that report it is stated as of January 1, 1940, the New Orleans owed the Missouri Pacific $10,565,227.00, on advances by the latter company to the former. They go on to explain about the notes that were given. They don't say they assume it; they say the New Orleans owed it. That plan came before this court on objections first in July of 1940, and then the hearing was adjourned to October, after taking some testimony. Your Honor will recall that there were quite a number of objections filed to that plan, but you will search in vain for any objection in regard to this inter-company claim. After considering the whole subject the court approved that plan. I do not mean to say at that time the court examined into the advances, because there was no objection, there was no

reason why it should; but I am just calling attention to the fact that this matter has been rather rampant for quite a long time.

Then the next thing that happened was in August, 1933. Mr. Thompson testified to the receipt of a letter from Mr. Biggs, as Mr. Comstock's counsel, suggesting that he, Thompson, should take some proceeding in connection with this inter-company claim, evidencing the fact that in August, 1943, counsel for Mr. Comstock was quite familiar with the situation.

The next thing that happened was the hearing before the Interstate Commerce Commission in October of 1943. There counsel for Comstock raised this point: He attempted to put in some proof by cross examining Mr. Wyer. The Commission correctly held, or the Examiner who was presiding, correctly held that that was not proper cross examination. He then should have, and could have, if he had prepared himself, put in his proof, which was the proper time for him to do it. He did not do it. He simply read an offer of proof, called no witnesses, putting in no documentary evidence.

The Court: What occasion was this, Mr. Kitchel?

Mr. Kitchel: This was the hearing before the Commission in October of 1943.

In August, he had written to the Trustee a letter which indicated that he knew what it was all about, but he made no attempt at that hearing to put in any proof.

After that hearing was closed he submitted a brief in which he questioned not only this inter-company claim, but the Alleghany situation, just put in a brief. Then he didn't do anything until after the Commission submitted its report of July 4th. Then he produced another client, the same counsel, Mr. Biggs, produced another client named Foley. And on July 21st, last, he asked leave to have Mr. Foley intervene for the purpose of contesting this claim. I was here and argued that at some length. Among other grounds for moving to dismiss was the ground of laches. That petition was denied. That was in July.

Then he waited until after this court had made its

order of October 31st, setting this hearing, and calling for objections. After that, if it please your Honor, he brought on a hearing before your Honor on December 1st, asking leave to intervene and to prosecute, to contest the claim which had been filed with the Special Master in the name of the Trustee. That probably was denied because the Trustee opposed it, but we also interposed then the defense of laches.

Now, Comstock and his counsel have waited eleven years before they really bring this point to an issue. I again refer to, stealing more of Mr. Leisure's thunder, Mr. Leisure, in his argument, cited a decision by Judge Hinks, in the New Haven case, where the court said, "Clearly it will frustrate all progress in matters such as these to wait until after the Commission has reported the plan and then for the first time seek an adjudication upon a claim."

Now, one of the elements of laches, the doctrine of laches, is detriment to the opposing party. I have submitted Mr. Railey's affidavit, and Mr. Brandwen has very kindly brought out the point on which some of these deceased gentlemen could have testified, if they were here. For instance, Mr. Eckert, the other day was asked about some entry on the books. He attempted to explain it by a memorandum which Mr. Johnson had prepared, and that was not admitted in the evidence. Mr. Johnson could have testified as to his explanation had he been alive. Safford, being the chief executive officer of the Texas Lines, received numerous letters from Mr. Baldwin, calling upon him to take certain action. He could testify on matters which are extremely relevant to this case. I won't go through all. Mr. Brandwen has done it for me. But the fact that those witnesses are not now available to those who are defending this claim, is a decided detriment, and makes the defense of laches almost imperative.

I could, however, in that connection mention the absence of Mr. Frank Andrews. Testimony was given here that he had approved the payment of certain dividends, a very important question upon which light might be thrown if he were alive. Some of the parties mentioned in the affidavit would not have had knowledge in regard to the financial transactions which have been testified to here,

but they certainly would have had knowledge in regard to the allegations contained in a number of the specifications of Objection 19, particularly the one of subdivision "J", to which I have previously referred, based on the subject of these parties. I say the delay in bringing these matters to the attention of the court, furnishes a detriment which makes our claim of laches complete.

Now, as to the party who is making this objection. It appears from the record of the hearing before the Interstate Commerce Commission in October, that Mr. Comstock acquired his ten secured serial bonds sometime late in 1942 or early 1943. His wife acquired her seventy bonds at about the same time, both of them at about ten cents on the dollar. Now, although he had only recently acquired these bonds, he is bound by the action, or lack of action of his predecessor in title. Notice of the hearings before the Interstate Commerce Commission, of all the hearings on the plan, notice of hearings before this court were duly published. His predecessors in title were charged with that notice, and as their successor, he is likewise charged therewith.

There is a general principle of equity that a party who desires to complain of corporate action must have been the holder of a security of that corporation at the time of the transaction complained of. That principle has been embodied in one of the rules of civil procedure; I think it is Rule 23-B, in the case of an action by a stockholder who questioned some corporate action. Now, although Mr. Comstock is a holder of a bond of the Missouri Pacific, he is an equitable holder of the stock of the New Orleans, Texas & Mexico, and he is complaining as such equitable owner of that stock. It does not fall directly within the language of that rule, because it is not strictly derivative. But the situation is comparable. The same rules of law should apply to it. And I submit that he is not the proper party to raise this point.

Now, in his objections Mr. Comstock states that he is objecting for himself on behalf of himself and fourteen owners of at least $900,000.00 additional secured bonds. But he had not taken the trouble to advise the court who these parties are, when they acquired their holdings, or

how much each had. He should not be heard in their behalf.

Now, your Honor, we contend that it is inequitable and unjust to permit the reorganization to be delayed by a party who only recently acquired an inconsiderable amount of bonds, and who has at stake a negligible amount of money, and who waits until after the plan has been approved by the Commission, before he offers any evidence in support of his claim that the inter-company claim is invalid. It is unfair that the distribution of millions of securities to bona fide investors should be held up in this matter. It is subversive of the public interest in two respects; first, because it compels the management of this great railroad system to constantly come to this court for authorities, for almost every important step it wishes to take. The court has always been helpful, but this procedure necessarily takes up the time of the officials and employes of the road who, during this war time have the most unprecedented job that has ever been presented to railroads.

It is detrimental further to the public interest in that it compels this court to be—to continue to be burdened with a constant stream of motions that will cease as soon as this plan of reorganization goes through. On all these grounds, your Honor, I move that the objection be overruled and the claim for equitable treatment denied.

My attention is called to the fact that on page 2839, referring to the parties holding Missouri Pacific secured bonds, represented by this counsel, they purchased the bonds as a speculation in the latter part of 1932, and early in 1943, at a price of about ten, and acquired the stock in the latter part of 1942 at about five dollars or six dollars a share.

Mr. Kirshbaum: If your Honor please, I simply wish to renew my motion and move to dismiss on the grounds stated.

Mr. Homire: If the court please, I would like the record to show that the Reconstruction Finance Corporation joins in the motion of Mr. Kitchel to dismiss on the ground of laches, and the motion to strike out, also.

Mr. Pierce: If your Honor please, the debtor would like to join in the same motion.

Mr. Brandwen: I assume everybody who wanted to join in that motion has already spoken?

The Court: I think they have all joined.

Mr. Brandwen: I just wanted to be sure that no one is left out.

The Court: I think Mr. Kirshbaum joined in the motion of his own, is that correct?

Mr. Kirshbaum: Yes.

Mr. Brandwen: And I don't know whether Mr. Homire was joining in any particular motion, or making his own independent motion.

Mr. Homire: I joined in Mr. Kitchel's motion. I do not join in Mr. Kirshbaum's motion particularly. I want to say I do not join in his motion insofar as it is based on the first two grounds he advanced in support of his motion, and I don't join in those.

The Court: What were the first two grounds, Mr. Kirshbaum?

Mr. Kirshbaum: That this objector was not the proper legal party to assert the objection, on the ground he had not obtained the permission of the court, or the Trustee, on which to present this claim, on the ground that otherwise this court would constantly be besieged by a number of similar suits brought by people owning a few securities who might come in here at any time and say they represent this group; and so that was the first ground; the second ground was that this objector has mistaken his remedy; that his remedy was not in the form of an objection, but was in the form of a claim; that if he had any claim he had to assert it against the Trustee after first complying with the rule of law which requires him to obtain permission of this court to assert an objection to that claim, or to obtain permission of the Trustee to assert that claim. And I don't wish to tell the counsel what he should do, but it is my humble opinion, your Honor, that

he should have appealed from any refusal of the Trustee, or of the court to grant him permission to assert his claim. That, I think, is the proper procedure, and not to stall this plan of reorganization by bringing in a claim.

I am going to say here, your Honor, when I say stall this plan of reorganization, I want your Honor to understand that we want the plan thrown out, but as I said in the beginning, we don't believe that this is the way to do it.

Mr. Brandwen: Well, I am glad to know, at least, that Mr. Kirshbaum—Mr. Kirshbaum's distinction on that point.

If your Honor please, I am not going to take much of your Honor's time with respect to answering the motions made by the various parties. I think that what has appeared this morning has demonstrated beyond peradventure of doubt that what we have to deal with on a great number of considerations is lack of information with respect to what is going on. If at this stage of the proceedings any one can argue seriously that what we should have done is ask this court for leave to file objections, and in the name of the Trustee, when we did everything we humanly could to do that, indicates the certain lack of information with respect to what is going on. I am just amazed. One of the suggestions made was that we should have appealed therefrom. There is an appeal pending now. And when I argued this matter before the Circuit Court of Appeals, to have the other matter disposed of, I got the very clear impression of course, there would be a full hearing on this matter before this court, and at this late stage to suggest that we have no standing because we did not ask this court for leave to file objections in the name of the Trustee, is simply incredible, and these matters are being presented, I assume, seriously. You find people blowing hot and cold here; hot when it is to their interest, and cold when it is to their interest on another matter. After all, while perhaps it may be that in certain situations, as Emerson says, that consistency may be the [hobgobblin] of vain minds, certainly I think in a matter like this, a certain amount of consistency might be in order. But after listening to the arguments in these mat-

ture since I have been here from January 8th, I have given up any hope of finding any such thing.

The same way, for example, one day when Wyer is against one, he indulges in arithmetical [legerdemain] and pencil magic. The other way, when Wyer is with him, then he testifies very fully and the greatest expert. Now, that is what we are dealing with here, very general movement, very fine opportunism, use anything and anybody as long as we can get a certain result. Now, when they speak of Mr. Wyer's full testimony on this claim—now, this has been referred to time and time again, this claim has been fully dealt with before the Commission, and this is what Mr. Kitchel said this morning. I have got the pages, so I don't have to rely on the record at the moment, because I made notes of what Mr. Kitchel says. This is the extent of Mr. Wyer's testimony with respect to this whole problem of advances involving over ten million dollars. He testified on pages 529 to 538, in the claim; that was his direct testimony, on all the advances, and he testified beyond pages 3367 to 77, on what the money was used for, and 83 to 92, that it was not used for dividends, a total testimony of twenty-eight pages, and there was one exhibit, the one that was shown the other day. No facts, just a lot of figures put on, and that is all the testimony. And that is the much-vaunted development presentation of an eighteen million dollar claim, that was made before the Interstate Commerce Commission, and that is the testimony on which they ask this court to rely.

Now, if that itself is not as convincing a demonstration of how little the Commission went into this matter, or knew about this matter, I don't know what else is necessary. Balance sheets, figures, when advances were made, what was done with them, allocations of all sorts of matters, I am not going to go into these matters, frankly, if your Honor please, because I am not going to indicate what significance may be given to certain information and testimony that is already in the case. Because, if your Honor should rule, should deny their motion, I am not going to indicate at this moment just how certain matters should be dealt with, certain matters of testimony, or what

the significance is of certain matters, and what relationship they have to very important legal principles. That I am going to do at some later time.

Now, that is all there is in this record before the Interstate Commerce Commission.

Now, then, they referred a good number of times to Judge Hinks' statement. When Mr. Biggs appeared before the Interstate Commerce Commission on October 19, 1943, at the very, very first hearing, after your Honor returned the plan to the Commission, the very first hearing, he raised the question about the validity of the claim. The reason why the Commission did not go into it is not because it was not proper cross examination, or should have been direct examination. It was because the Commission took the position as stated at that time, giving the statement given to Mr. Biggs, "If there is something wrong with that claim, you go to the court about it and don't bother us and the Commission about it."

Now, then, what is the pertinence, what is the relevance of all of these cases that say, well, now, if you had something why didn't you take it up before the Commission, when, in an attempt to take it up before the Commission, at its very, very first opportunity, when this matter was returned to the Commission, the Commission said, "Why, this is a matter for the court; don't bother us about it." What to expect, Mr. Biggs, or what could have anybody expected Mr. Biggs to do under those circumstances? That was a ruling. Of course, he did the next best thing, he just made an offer of proof under the circumstances; what else could he have been expected to do? There was nothing else that he could have done, and one thing is clear, the Commission states in its report of July 4th, it has not passed on the validity of the claim, just made an assumption. But that is a matter for the court to determine.

Now, in this connection, and I mean no offense when I say what I am about to say, that when Mr. Kitchel said that he would like to steal a little of Mr. Leisure's thunder —I mean no offense, Mr. Leisure—I prefer to follow that light from the Supreme Court, and this is the light thrown in this matter by the Supreme Court. The Supreme Court

says, and says so in language that there can be no question of doubt in anybody's mind, it says, "For example, there may arise controversies over the priority or the validity of claims." This is a matter involving validity of claims. And the Supreme Court goes on, this is in the Western Pacific case, the recent case, "The Commission finding involving such problems would require an independent examination and affirmation by the court." So that here you have a situation where the Commission itself said, "We are not even going to examine it." So, of course, it has to be examined by the court. But the Supreme Court says that even if there were a finding by the Commission this court would still have to make its own independent examination, and the words, "independent examination," are quoted from the Supreme Court's opinion.

Now, you cannot have any clearer language than that. When they referred to what Judge Davis ruled some years ago, if they meant to suggest when they quoted Judge Davis' opinion that if it is not taken up before the Commission you cannot deal with it afterwards, then all I can say, with all due respect to the late Judge Davis, that his decision was handed down long before this recent Supreme Court decision in the Western Pacific case. That is the law. And certainly, if there should be any conflict between the late Judge Davis' understanding of the law, and the Supreme Court's understanding of the law, and statement of the law, why, there is no question as to what your Honor has to be bound by. That is why it is either Judge Davis' opinion is material, or is not. If it is material it is overruling, if it isn't material, why, let's not waste any time about that.

Now, the Supreme Court of the United States sent back to the court, when the court refused, or failed to resolve a dispute as to whether certain properties were covered by a mortgage, or not, and there is just no way, if your Honor please, that when a matter is called to your Honor's attention, that may [effect] the rights of the parties, I go so far as to say that irrespective of how it is called to your Honor's attention, who it is who calls it to your Honor's attention, the source of that is utterly unimpor-

tant. But if it is called to your Honor's attention, and that is an issue that may affect the priority or the validity of a claim, I say your Honor must, as a matter of law, under the decision of the Supreme Court, resolve that dispute.

Now, I want to say this further, a good deal has been made, a good deal is being made of the fact that Mr. Comstock bought these bonds at a late date, and as though that made any difference. Or they say that Mr. Comstock bought them at a low price, as though that made any difference. I don't see any objection being raised to the New Orleans Bondholders Committee, when I stated yesterday afternoon what they did. I rely on the fact that once this issue is raised, and I plead with your Honor, that the only way in which the Supreme Court mandate can be observed is by the resolution of this dispute; otherwise, this estate will not have had the benefit of that kind of administration to which it is entitled.

But I want to go beyond mere reliance on these broad principles that have their origin in the legislative history behind Section 77, that are expressed in Section 77, and that are express Supreme Court decisions. I should like to point out first, that no matter how small the interest is that opposes any other interest, the Supreme Court has ruled very definitely on that in the case against Los Angeles Lumber Company. I think their interest was as low as one percent, and all the others agreed it just didn't matter. It is a recent case.

Now, with respect to the date of purchase, or the price of purchase, with respect to the doctrine that Mr. Kitchel referred to, I should like to call your Honor's attention to a decision of the Supreme Court of the United States. We do not have to rely upon interpretations. In Consolidated Rock Products, 312 U. S., is my recollection on that, it was probably in 1941, in that case, if the record is examined, and that is referred to in the opinion of the court in those proceedings, that the objector bought the securities after the bankruptcy proceedings, and said expressly that he only paid a small amount of money for them, and the court says, I am now reading from the opinion of the Circuit Court of Appeals, but it deals with the facts on the matter: "Some suggestion is made that because Dubois, the objector in that case, paid only a small

amount of money for his bonds, we should approve the plan." Just paid a small amount of money; has no right to be heard, that is what people in position of the first refunding bondholders group said in that case. What does the court say with respect to that? "We cannot accede to that view. First, because the court must of necessity give an informed independent judgment as to the fairness of the plan, and because whatever Dubois paid is immaterial to the consideration of the real question, is the plan fair and equitable."

Now, that is the latest word on that subject. And it is a very sound word, although that comment is not necessary from me, because that is what the Supreme Court has ruled.

Now, I don't want to argue this point in any extended fashion with respect to Mr. Bailey's affidavit, which was cross examination. A very careful examination of the testimony adduced, and particularly of the exhibits adduced from books and records submitted by officials of these roads to the Interstate Commerce Commission, disclose what the situation is. We don't have to have Mr. X's testimony to prove, when the books show and it is admitted by everybody that on certain days New Orleans, Texas & Mexico paid dividends. That is an admitted fact. We don't have to have either Mr. Safford, or Mr. Johnson to establish that fact. What the legal effect thereof may be, what significance should be attached thereto is certainly something that they could not testify with respect to. Nobody is questioning the fact that on June 17, 1931, two dividends were declared in the same meeting, and for certain amounts. Nobody is questioning the fact that within twenty days thereafter, on July 11th, another dividend of $3,500,000.00 was declared; nobody is questioning the fact as to how much of that was ever paid. Suppose they say, suppose they would have said that is what they wanted to do. What of it? The law steps in at that point and takes over. Principles of equity step in and say, "From that point we will take over," and say, give the answer to "What of it?" "We will show whether that should have been done or should not have been done."

I don't want to go into any further detail on this, not because a great deal may not be said, but because in view

of the fact that I do not know how this court may rule, I do not want at the present moment to argue the significance of this testimony.

If your Honor please, Mr. Kitchel, in his conclusion stated that delay of distribution to security holders is not fair.

The Court: You say what is not fair?

Mr. Brandwen: Delay of distribution to security holders is not fair. Well, that can be discussed at great length. I don't think that security holders have been hurt at all by the administration of this estate in court. The records show their position has been substantially improved, very, very materially improved. But realizing that kind of argument might be made, we did not confine ourselves to a single issue. If your Honor please, I wish to state for the record now that just as sure as today is January 19th, Friday, if your Honor should approve the plan that is before this court, the reorganization managers will come back to this court at some later date, years from now, and say they made a mistake and the plan cannot be executed. And in years to come they will have to come back to this court, and ask this court to return this to the Commission at that time. I state that that is inevitable, and it just cannot be escaped from.

Mr. Kitchel: Mr. Brandwen seems to me to have avoided the question of laches rather thoroughly. He calls attention to decisions which say that a certain claim, or counter-claim should be disposed of by the courts. Well, we don't deny that, provided it is brought before the court at the proper time. Now, when he refers to the Western Pacific and Milwaukee cases, where they sent certain questions back to be decided by the court, but in those cases the issues as to those particular matters had been raised seasonably before the Commission. The Commission had passed on them, but the court did not. There was not any question of laches there. It was very different from this case. If this matter had been brought before the court in proper season we would have quite a different question. But it is too late now. The fact that the Examiner, when Mr. Biggs was before the Commission in October, 1943, told him to go to the court, well, why

didn't he go to the court? That was in October, 1943. That does not excuse his laches.

Now, then, departing from that, Mr. Brandwen has stated that the case can be proven from the books, and no doubt that dividends were paid on certain days, and things like that, take the books, they speak for themselves. Page 15, of the specifications of his objections, paragraph (h): "In order to permit the payment of such dividends, Mott causes the debtor to keep improper records, and books of account, so as to conceal the true state and conditions of the properties, finances, and affairs of the debtor and its subsidiaries."

Well, we need the testimony of the men who dealt with those books, and are now departed, on that question.

Mr. Brandwen makes the further point that there are a number of other people in the office who dealt with these various questions, and I assume he means that they can give us the proper testimony. Perhaps they can give some, but we want the testimony of these head men who handled the things. I renew my motion.

Mr. Leisure: May I say, your Honor, I have waited patiently here for two weeks, hoping every day that we would be reached, and the time has now come when I must go back, at 12:30; and your Honor said yesterday, on my motion, that our case be set over to a separate hearing that perhaps Mr. Brandwen and I could agree upon a day. If that is satisfactory we can leave it that way, or I am willing to have your Honor set a date after this hearing is concluded, at any time your Honor thinks proper.

Mr. Brandwen: That is perfectly agreeable.

The Court: Very well.

Mr. Leisure: I suppose your Honor has in mind that I have a motion pending, and I would just like to renew it at this time on all the proceedings in this matter since 1933.

The Court: You made an oral motion?

Mr. Leisure: I made a motion at the beginning of the proceedings.

The Court: Did you file a written motion? Oh, yes, you did, that is right.

Mr. Leisure: And I will just renew it at this time, on all the proceedings had herein.

Mr. Brandwen: I have the same objection in, too.

Mr. Kirshbaum: I will just take a moment, you know, to answer Mr. Brandwen's remarks with regard to the points which we raised for the dismissal and striking out of his objection 19, and related objections, to point out to your Honor, to point out that it is not all to simply raise an issue. A man must be properly before the court before he can raise a particular claim in a particular way; otherwise there is nothing to stop anybody from walking in at any time in the proceeding and at the eleventh hour go out in the market and buy a bond and say, "Your Honor, I hold one bond, I am going to hold up this reorganization. I don't care that there are hundreds of millions involved here. I bought a bond; I am a stockholder, and you will pay my price or else."

Now, I am sure your Honor will agree with me that neither the case against the Los Angeles Lumber Company, nor the Dubois case, ever intended to hold any such thing, that anybody could waltz into this court room at any time and say, "I own a security and therefore I must be paid." I respectfully submit to your Honor that the law presumes that any security holder who comes before your Honor to hold up a plan of reorganization must be a holder in due course of that security. And any security holder who comes before your Honor with a security that he has bought with knowledge of the infirmities, if any, that exist in that security is deemed to have taken it with knowledge of those infirmities.

Mr. Brandwen: If your Honor please, the Supreme Court decisions speak for themselves. There is no point that I could see would be served by arguing the Supreme Court decisions. They made them.

If your Honor please, it is true I have not dealt with these matters as fully as they could be dealt with. I could deal with each one of these matters very fully. But I think your Honor has heard a great deal of argument

already, not merely this morning, but on other days, and I don't want to go into it very fully.

I find it very difficult to understand some things here. On the one hand there is a suggestion that because in 1936 the Trustee wrote the Interstate Commerce Commission, and asked the Interstate Commerce Commission whether it had any information as to irregularities by the Trustee, and because the Commission did nothing about that—I don't know whether it is argued that disposes of the matter or not—I don't know, they are not spelled out, they are not articulated.

There is a petition filed by the Walker Committee, and by the Irving Trust Company, in 1937, that sets out some of these things. There were no hearings on them.

The Court: The motion made by the Walker Committee was never pressed. It is still before the court, I think, never pressed.

Mr. Brandwen: Never pressed. No, it wasn't.

The Court: Is that correct?

Mr. Brandwen: That is correct; it was never pressed. There was an order entered by this court continuing the hearings on that application and the order recited it could be redocketed with thirty days notice.

Now, if your Honor please, I suppose the reason why it was never pressed by those parties was because the dispute that existed between them, the first refunding committee, and others on the one hand, and the New Orleans, Texas & Mexico committee on the other hand, were being worked out, and since they were being worked out, there was no need, so far as they were concerned, to have that pressed. But the mere fact that parties in interest can work out an accommodation amongst themselves, does not exorcise the existence of an issue or a problem; the problem still remains. If a wrong was done, if the claim was invalid, the [merely] fact that these parties were able to arrive at an accommodation among themselves, on other grounds, does not in any way remove that fact that that claim is still there; that claim has to be determined. And the fact is that at this present moment that matter is still before this court.

Now, I am not going to argue at this point, frankly, what should have been done in 1937, or what should have been done by the various parties thereafter, not because there wasn't a great deal that should not have been done, not because they didn't have it in their power all the time to have something done that would dispose of the matter, and the problem, and the task was theirs; and when they did not do it they cannot now complain. I say a great deal can be said about that, I don't want to do it at this moment, but I do think that any one who has an interest in the administration of this estate would want to see that problem disposed of once and for all, and if there is a judicial determination, then these fantastic fears conjured up in the minds of certain people would not come into being, because if there is a judicial determination of this claim nobody else can deal with it, it becomes res adjudicata, and that is the thing that we want to have determined.

Now, the problem of laches: It is, oh, I suppose, a good rod to use to beat certain people with sometimes. Sometimes it applies, sometimes it does not. It is a very general term. I don't understand what Mr. Kitchel means that after Mr. Biggs did everything he humanly could to get the matter heard by the Commission, and the Commission said, "We won't hear it," and that was the very first hearing, I will repeat. When you speak about a seasonable presentation of a position, how can anything be more seasonable than the presentation of the matter at the very first hearing? And still the Commission said, "No, we want you to take this up with the courts." Now, Mr. Kitchel complains, "Why didn't he do it right away?" It was done six or seven months before these hearings began; and I think the record will disclose very clearly that one of the motives in having it done six or seven months before these hearings began, was that this matter might be out of the way before the hearings began. But at that time it was the order of the day to blo ; hot, now it is the order of the day to blow cold.

Now, coming to this very, very interesting affidavit that was submitted this morning. As an illustration, if your Honor please, of how utterly unworthy of effect that could

be given to this, now, I want to call your Honor's attention to the fact that Mr. Railey says, "If these men were living today they would be in a position to offer substantial testimony," and because they are not living today they may be laches. Who is the first man whom he mentioned? Mr. William H. Williams. Do you [——] when Mr. Williams died And I am reading from Mr. Railey's affidavit, in 1931, two years before these proceedings, 77 proceedings, began. At the suggested—

Mr. Kitchel: Seven years after the transaction started.

Mr. Brandwen: When you are dealing with time, if your Honor please, the Deep Rock, Taylor against Standard Gas & Electric, decided in 1939, the transactions dealt with were in 1919, twenty years before the decision by the Supreme Court.

Mr. Williams died in 1939. What could we have done then? Got the deposition of Mr. Williams in 1931, on the notion—before he died, that he might die, and that in 1933 there might be bankruptcy proceedings, and that later on there would be a claim asserted? And still, that is the first name given here. The man died October 14, 1931. And we are guilty of laches now because Mr. Williams is not alive, and that if we had been more active we might have gotten Mr. Williams' testimony.

The Court: Oh, I don't think there is anything to that.

Mr. Brandwen: Now, with respect to these other people, no matter when we would have started these proceedings, the effect of this affidavit really is no matter when we would have started these proceedings, we would not have been able to use these men and they could not have used the argument of laches. Therefore, I think, if your Honor please, the argument of laches has no place here, for a variety of reasons, factual and legal.

Mr. Kitchel: It isn't a question, your Honor, whether my opponent should have used those witnesses, it is a question of whether I could use them. They are not here.

The Court: That is all on this question then, gentlemen?

Mr. Kitchel: That is all I have, your Honor.

The Court: No one else that wants to be heard at this time?

The only other matter then is in regard to the form of this order, is it not?

Mr. Homire: And fixing of the date for the resumed hearings.

The Court: Yes. Well, I would be glad to hear any suggestions from counsel on the date.

Mr. Kitchel: One of our chief witnesses, your Honor, will not be available until February 19th.

The Court: What about Monday, February 26th? Would that be an agreeable date to counsel?

Mr. Kitchel: I was just trying to figure the time, your Honor, of March 5th, the Missouri Pacific hearing on allowances in Brooklyn.

The Court: I suggest Monday, February 26th.

Mr. Kitchel: I think that will be satisfactory.

Mr. Brandwen: If your Honor please, as I said yesterday, I was very anxious to have the hearings continue right now, but in view of the fact that Mr. Kitchel stated there were certain personal considerations of his, that made it necessary for him to return, I am agreeing to it on that basis.

The Court: I could make one further suggestion if you want to place it after the March 5th hearings. I can give you a date right after that without any difficulty.

Mr. Kitchel: It would be a little more convenient.

The Court: How about Monday, March 12th?

Mr. Kitchel: That is all right.

Mr. Dearmont: I have no concern about when the gentlemen set their case, but if they think the hearings in Brooklyn will only last two or three days they are optimistic, because, representing the Trustee, I know it will take time. The last time I was there a whole week, and then adjourned to Washington for two or three days more.

The Court: Will March 19th be agreeable to everybody?

Mr. Brandwen: Yes.

Mr. Biggs: Yes.

Mr. Kitchel: Yes, that is all right.

The Court: All right, it will be March 19th, then. And those motions will be taken under submission.

Mr. Brandwen: I don't know what arrangement your Honor would like to have with respect to briefs.

The Court: Do counsel wish to file briefs? This does not give much time for briefs.

Mr. Brandwen: No.

The Court: What are the views of counsel about filing briefs on these motions, do you desire to?

Mr. Kitchel: I don't think so, your Honor.

Mr. Brandwen: Then it is understood on this motion made by Mr. Kitchel this morning there will be no briefs?

The Court: Very well.

Mr. Kitchel: How about Mr. Kirshbaum and Mr. Leisure?

Mr. Brandwen: They have gone.

The Court: I know they have gone.

Mr. Homire: Mr. Kirshbaum asked me to explain that he has gone, and he left these motions pending. He didn't ask me to add anything further to what he said.

The Court: They will be taken as submitted.

Mr. Homire: Now, if your Honor please, on the order of procedure, I have heard no objections.

The Court: There is no objection to the order as made, is there?

Mr. Brandwen: Yes, there is, if your Honor please. What I have objected to is paragraph 4, particularly, I am not going to deal with the formal part of that. I will come back in a moment. I think, if your Honor please,

that it is not orderly procedure to suggest to the court that if the court is so disposed to invite the Commission to issue such further supplemental report on an "if" situation. I think that when this matter, now this matter is before the court, it doesn't seem to me appropriate to ask, or to suggest to the Commission, now, if I decide this matter, or the appellate court decides the matter one way, I will provide one allocation, and if they decide another way there will be another allocation, I think this might be appropriate—

The Court: It might save a great deal of time.

Mr. Brandwen: But you might have this problem, the question of the determination of what should be done, may be made a little more difficult with the Commission in doing it on an alternate basis, and I think that there is no warrant for it. If, for example, this matter were judicially determined—let us assume for the moment a hypothetical situation; let us assume for the moment that it had been judicially determined, and let us say it was judicially determined, I say hypothetically, that the claim was not valid, then at that time I could see how this kind of procedure might very well be in order, and that would be the kind of procedure that there is authority for in the New Haven case, but since this is an "if" situation, I think that is a little—I think more than little, I think it is not sound procedure, not orderly procedure. I don't think it is right in view of the fact that we have gone so far as to suggest to the Commission to do it.

The Court: It seems to me it is very appropriate.

Mr. Brandwen: I would like to make one further suggestion. I would like to say this on the first page of the order, about the thirteenth line, after the words, "joined in said motion," I would like to say, "and counsel for Andrew W. Comstock having opposed the motion," I would like that inserted. Mr. Homire said there was no objection.

Mr. Homire: No objection to that, if they oppose it.

Mr. Brandwen: Do you want Mr. Homire to write it in there?

The Court: Write it in there in your handwriting, that is all right.

(Mr. Homire thereupon inserted the above mentioned phrase, as requested by Mr. Brandwen.)

Mr. Homire: I have made the one change Mr. Brandwen asked, and the other one I think is out of order.

Mr. Brandwen: The one change as to form.

The Court: What is the other suggestion?

Mr. Brandwen: I was going to ask, and I asked Mr. Homire, I would like to state, that is in the next line after the words, "and the Court having considered the arguments of counsel," "And counsel for Andrew W. Comstock having rested after presentation of evidence in opposition to the claim heretofore filed in these proceedings against New Orleans, Texas & Mexico, and no evidence having been presented in support of said claim against N. O. T. M."

Mr. Homire: I think, that is objectionable because it describes this hearing as a hearing on the claim, which is not a fact, and I think so far as when they rested is concerned, the record will speak for itself, and it is unnecessary to make a recital. I don't think it is necessary, and the way he has worded it, I think is erroneous.

The Court: Can I understand the order is signed the day it was rendered? The 17th, was it not?

Mr. Homire: Yes, the 17th.

The Court: Only the one amendment then, as interlined by Mr. Homire, will be allowed in the order.

Mr. : There are some of these exhibits submitted by Mr. Brandwen, which are subject to check, and in which we wish to make some changes. I thought I would try to get together with him in New York on that, the same as on any changes in the transcript, so that may be all ironed out before we come back the next time. Is that agreeable, Mr. Brandwen?

Mr. Brandwen: That is perfectly agreeable.

Then I understand the matter of filing briefs with respect to all this will be deferred to after the resumption of the hearings on March 19th, is that so?

The Court: No briefs filed on these motions?

Mr. Brandwen: On these motions this morning, but briefs on the plan itself, and on the resumption of the hearings after they are resumed.

Mr. Homire: I would like to be clear, if your Honor please, I don't know that any one has asked that briefs be filed in respect to any questions other than these matters that still have to be heard further, but if any one desires to file a brief on any of the other questions, I should think it would be a saving of time to have those briefs in before March 19th.

The Court: What questions do you refer to?

Mr. Homire: The question Mr. Comstock argued at some length yesterday, that is, where the plan is fatally defective on account of cash options, and the question of whether it is fair and equitable in respect of the designation of the reorganization managers and the mortgage provisions, etc. If those are to be briefed, and I don't know that anybody has asked they be briefed—

Mr. Brandwen: I am asking we have an opportunity of submitting a brief on those matters. It seemed to me that in the interest of having all this done at one time it might be most appropriate to have it done after the hearings, for example, on the resumption of the claim hearings, and the Alleghany matter, which follows the resumption of the claim hearing, be heard.

Mr. Kitchel: We are rather anxious, your Honor, to have this hearing on the plan as distinguished from the separate hearings proceed as rapidly as possible, and if anybody wants to file a brief the time should be fixed. As a matter of fact, the order calling this hearing said the briefs should be filed on November something or other, November 25th, I think it was, the answering briefs, on January 2nd. Of course, your Honor can change that.

Mr. Brandwen: I think, if your Honor please, it would

be most appropriate, and I suggest with the utmost respect that I think it might be helpful if additional briefs were submitted. In view of the fact this matter is going over until March 19th, and in view of the fact until after the hearing on the claim is concluded, then, further matter is to be taken with respect to the Alleghany objection, it would seem to me all those things would have to be before your Honor, before your Honor might want to deal with the whole problem. I don't see how there would be a disposition of this matter until all those matters are in, and it seems to me that it would be helpful, and I think it would be more simplified and more unified if it were all done at one time.

Mr. Kitchel: Those two matters in separate hearings can proceed on their own course, but the other objections to the plan, so that your Honor can make up his mind what he is going to do with those, ought to be accelerated. If briefs are to be filed I think the objectors should file their briefs, it is their contention we are opposing it. We should have an opportunity to reply.

Mr. Homire: It seems to me, your Honor, otherwise it would be a waste of time, would delay the matter.

Mr. Brandwen: As far as that goes it is entirely agreeable. If we file briefs they should have time to make reply. I thought there would be time for that, and I thought in the interest of helping the court, in view of the fact that all these matters converge at one point, recognising, of course, the phase of the matter, perhaps your Honor would want to consider all these briefs, and let your Honor have a full picture of everything that is submitted.

Mr. Kitchel: The idea was that they should not converge at one point. The plan was that independently these hearings should go ahead.

The Court: There is no time set or agreed upon in the Alleghany matter.

Mr. Brandwen: That was to follow at the conclusion of the hearing on the claim.

The Court: The setting on March 19th—

Mr. Brandwen: On the inter-company plan, and when that is concluded we are to go on with the Alleghany, and we will just have to do the best we can, Mr. Leisure, and I, about fixing the time of the other matter.

The Court: I am a little confused about this suggestion on the briefs. Under what particular grounds do you ask to file the brief?

Mr. Brandwen: On the plan, the objections to the plan, such as, for example, the points made in recent days, what I call the financial fatal defects of the plan, problems of control, problems of the so-called escape clause.

The Court: I think that ought to be filed as soon as possible before the hearing.

Mr. Kitchel: Your Honor ordered the briefs to be filed back in November, and our brief in January.

Mr. Homire: You didn't argue these points at that time.

Mr. Kitchel: Did not even raise them.

Mr. Brandwen: I raised them. But if your Honor please, I think it would be helpful for the Court if these were put forth in brief form, so they would be before the Court.

The Court: How soon can you do that?

Mr. Brandwen: I would like to have a number of weeks for that because we have been here in St. Louis for two weeks and we have been under tremendous pressure, and a number of things have accumulated.

The Court: Well, what time do you think you ought to have?

Mr. Brandwen: Well, I think we ought to have a month at least. If we have a month at least that would bring it up to February 19th, or 20th, and after all the other matter is not coming on until March 19th.

The Court: What time does counsel want to answer the brief?

Mr. Homire: Two weeks.

Mr. Brandwen: That is agreeable.

The Court: You will be given to February 19th to have your brief in, and answering brief on March 5th.

Mr. Homire: All right.

The Court: Is there anything else to take care of?

Mr. Kitchel: We have nothing more.

The Court: You may announce the recess.

(At 12:45 p. m., the Court adjourned, the hearing to be resumed at 10:00 o'clock a. m., March 19, 1945.)

Met, pursuant to adjournment, on March 19, 1945, at ten o'clock A. M., with the following appearances:

Mr. W. Lloyd Kitchel,
Mr. C. W. McConaughy, and
Mr. Jacob Chasnoff,
Attorneys for Group of Institutional Investors, First and Refunding Mortgage Bonds.

Shearman & Sterling & Wright,
by Mr. Sanford H. E. Freund,
Attorney for Bondholders' Protective Committee, General Mortgage Four Percent. Gold Bonds.

Mr. Marion B. Pierce,
Attorney for Debtor.

Mr. James L. Homire, and
Mr. Emmet McCaffery,
Attorneys for Reconstruction Finance Corporation.

Mr. Everett Paul Griffin,
Attorney for Protective Committee First Mortgage Bonds International-Great Northern.

Mr. Edwin J. Bean,
Attorney for Gerald Axelrod and other members of a Group of Holders of 5½ Per Cent. Convertible Bonds of Debtor.

Cahill, Gordon, Zachry & Reindel,
by Mr. Don B. Stookey,
Attorney for Chemical Bank & Trust Company,
Trustee of Secured Serial 5¼% Bonds.

Blaney, Barrett, Bedal & Fairfield,
by Mr. Jesse W. Barrett,
Attorney for John M. Balliet, Intervenor.

Mr. William H. Biggs,
Attorney for Andrew W. Comstock.

Mr. Russell L. Dearmont, and
Mr. Thomas T. Railey,
Attorneys for Trustee.

Bryan, Cave, McPheeters & McRoberts,
by Mr. John Donnell,
Attorneys for Mortgage Trustees, Little Rock,
Hot Springs and Western Railroad.

Donovan, Leisure, Newton & Lumbard,
by Mr. Roy W. McDonald,
Attorneys for Alleghany Corporation.

Mr. McConaughy: The Group of Institutional Investors is prepared to proceed.

Mr. Biggs: Comstock is ready to proceed.

The Court: You may proceed.

Mr. McConaughy: Your Honor, in order to save time I should like to hand Your Honor a copy of the exhibits which this witness will use in his testimony; also, an enlarged copy of one of the principal exhibits, showing the advances, on which I have noted the Comstock Exhibits upon which we rely as to proof. That is Exhibit 226 that was filed before the Interstate Commerce Commission.

The Court: Very well.

MARTIN ECKERT,

having been heretofore duly sworn, resumes the witness stand and testifies on behalf of the Group of Institutional Investors, as follows:

Direct Examination by Mr. McConaughy:

Q. Mr. Eckert, have you prepared an exhibit showing corrections in Comstock Exhibits 24, 25, 26, 37, 39, 41, 44, 46, and 131? A. I have, sir.

Mr. Biggs: If Your Honor please, I object to any evidence being offered by the Institutional Investors Group in this matter. This is a claim by Mr. Thompson, as Trustee of the Missouri Pacific. If any evidence is to be offered in substantiation of that claim it should be offered by Mr. Thompson as Trustee. I believe he is the only competent party to offer evidence in substantiation of the claim.

If evidence is allowed to be introduced by the Institutional Group we are in a position of not knowing whether that evidence is vouched for and adopted by Mr. Thompson; if it is not, it is certainly not competent evidence in this matter.

I should like at this time to object to any and all evidence that is to be offered by the Institutional Investors Group.

Mr. Kitchel: If Your Honor please, this is a hearing on objections to the Plan, and all parties have a day in Court on that.

The Court: Objection overruled.

Mr. Biggs: May the record show that we are making this objection to each exhibit and to each offer in evidence?

The Court: The record may so show.

A. I have prepared an exhibit showing the corrections in Exhibits 24, 25—Comstock Exhibits 24, 25, 26, 37, 39, 41, 44, 46, and 131.

Mr. McConaughy: Upon what is that exhibit based?

A. Based on company records.

Q. May I have it, Mr. Eckert?
A. Yes (handing exhibit to counsel).

Mr. McConaughy: I should like to offer that in evidence.

(The exhibit was thereupon marked Group Exhibit 1.) [See Vol. of Exs. p. 234.]

Q. Mr. Eckert, do you have a group of cancelled checks and original letters, relating to the advances shown on ICC Exhibit 226? A. I have, sir.

Q. Those are all of the checks and letters relating to those advances, which were not shown by Mr. Brandwen, or not produced by him here; is not that correct?

A. They were not produced by Mr. Brandwen.

Q. I think there are three checks on the whole list that have been lost, is that correct? A. That is correct, sir.

Mr. McConaughy: I am not going to offer them in evidence, because they are all listed in the exhibit to which they are appended (handing documents to Mr. Biggs).

Q. Mr. Eckert, have you prepared an exhibit listing all of the advances shown on ICC Exhibit 226, and all payments made in connection therewith?

A. I think you are referring to Exhibit 26—

Q. No; I am referring to ICC Exhibit 226. A. Yes.

Q. What is the source of that exhibit?

A. Company records.

Q. That was prepared under your supervision?

A. Yes, sir.

Mr. Biggs: Do you offer that?

Mr. McConaughy: Not yet.

Q. I ask you if that is the exhibit? A. That is correct.

Mr. McConaughy: I offer that, for identification only at this time, marked as Group Exhibit 2, for identification.

(The exhibit last indicated was marked accordingly.) [See Vol. of Exs. p. 239.]

Q. Mr. Eckert, the first advance on that Group Exhibit 2 is in the amount of $300,000., and the advance was made on November 30, 1928; is that correct? A. Yes, sir.

Q. You have just exhibited a check showing that payment? A. Yes, sir.

Mr. Biggs: I move that the evidence be stricken out, because the claim of the Missouri Pacific begins March, 1929, and this check is dated November 30, 1928, and the exhibit shows that it is an alleged advance in November, 1928, which is before the beginning of the claim.

Mr. McConaughy: Your Honor, before we are through that will all be explained, and I ask Mr. Biggs to kindly reserve his objection until he has heard a little more. We are going to explain that completely and show how it is tied in.

The Court: It will be admitted.

Mr. McConaughy: Q. Your next is $100,000., December 31, 1928, advance of the Missouri Pacific to the New Orleans, Texas & Mexico? A. December 30, 1928.

Q. You have exhibited a cancelled check for that?

A. Yes, sir.

Mr. Biggs: My objection will run along to this?

The Court: It may be so understood.

Mr. McConaughy: Q. The next item is $150,000., of January 31, 1929? A. That is correct.

Q. And you have exhibited the original cancelled check for that? A. I have.

Q. The next item is $250,000., February 28, 1929, and you have exhibited a cancelled check for that one?

A. Yes, sir.

Q. Now the next item, and all the others down to October 31, 1932, have been accounted for by Comstock Exhibits. The next item is $1,261,010. on October 31, 1932. That is referred to in Comstock Exhibit 134, is it not, Mr. Eckert? A. Yes, sir.

Q. Have you looked over Comstock Exhibit 134?

A. Yes, sir; I have.

Q. Is that exhibit a correct reflection of the books and records of the Missouri Pacific?

A. It is not a correct reflection of the books.

Q. Will you kindly tell us what is wrong with that exhibit?

A. The text of the Missouri Pacific journal entry 33, of October 31, 1932—

Q. Will you wait just one second?

(Mr. McConaughy here handed exhibit to the Court.)

Now will you start again with your comments on that?

A. The text of Missouri Pacific journal entry 33, of October 31, 1932, appears on the first half of sheet 1 of Comstock Exhibit 134.

Q. How far does that go down?

A. To the words "Memo of Journal Entry 5".

Q. All the rest is not a part of the journal entry?

A. That is correct, sir.

Q. Now what is your next one?

A. The remainder of Comstock Exhibit 134 is excerpted from the journal entry file which supports journal entry 33, and is referred to therein.

Q. What do you mean by journal entry file?

A. Journal entry files usually consist of papers, letters, or other instruments which might be attached to it.

Q. Which explain the journal entry?

A. That explain the entry itself, but do not have a bearing on what is entered in the books.

Q. They are kept separate and apart from the journal, in a file? A. That is correct.

Q. What is your next comment?

A. The quotation at the foot of sheet 1 of Comstock Exhibit No. 134 is only one paragraph of a memorandum which Mr. Delaney found in the file. When I was questioned about this matter by Mr. Brandwen I read a letter written by the late Mr. Johnson, sometime in 1935, I think it was, in which he explained the entire entry. I read the letter, but I understand it was stricken from the record on Mr. Brandwen's objection.

Mr. McConaughy: May the record note, that that occurred at Transcript pages 519 to 523?

Q. Have you a copy of that memorandum that was stricken out? A. I have, sir.

Q. And the last paragraph appearing on the first page of Exhibit 134 is an excerpt from that same letter?

A. That is correct. In other words, the man didn't copy the whole letter; he just copied that part of it.

Q. Is that a true copy of the memorandum (indicating)?

A. It is a true copy of the memorandum, prepared by Mr. Johnson.

Mr. McConaughy: I should like to offer that in evidence.

Mr. Biggs: Just a minute.

(Mr. McConaughy here handed exhibit to Mr. Biggs.)

Mr. Biggs: If Your Honor please, I wish to renew the objection that Mr. Brandwen made, and on which objections this letter was stricken. I also object on the additional basis that the claim of the Missouri Pacific is based on cash advances to the New Orleans, Texas & Mexico, and Exhibit No. 3 clearly shows on its face that this does not involve a cash advance.

Mr. McConaughy: Your Honor, this which has been marked Group Exhibit 3 is not the whole file on the matter. This is just one item. I contend that it is admissible in evidence for the reason that he put in an excerpt of one paragraph not the entire letter, and Your Honor is entitled to see the whole letter.

The Court: Objection overruled.

(The memorandum last offered in evidence was marked Group Exhibit 3.) [See Vol. of Exs. p. 240.]

Mr. McConaughy: Q. What is the next item on Comstock Exhibit 134?

A. The heading on the second and third sheets of Comstock Exhibit 134 is misleading, as the matter on these sheets is taken from journal entry files to which I have referred and the total of the—

Q. Wait a minute, Mr. Eckert. I would like the Court to see this, if you don't mind.

What is the heading there, do you have it?

The Witness: The heading on the second sheet reads—

Q. Of 134?

A. "Transcript from journal entry 33, October 31, 1932, files of Missouri Pacific".

Q. That same heading appears on the third sheet, too, doesn't it? A. Yes, it does.

Q. Not any of that page comes from the [hournal] entry; that is correct? A. That is correct.

Q. All that matter on those two pages comes out of journal entry files?

A. Out of the files, yes. Now, there is a—

The Court: What does this mean (indicating)?

Mr. McConaughy: J. E.? It gives an indication that it is from the journal entry, where it is merely the—

The Court: It has "J. E." at the head of each page.

Mr. McConaughy: Yes.

Q. What is your next point, Mr. Eckert?

A. The next point is that a total was made of the advances, unpaid bills, interest on unpaid accounts, a set of totals which did not appear in the journal entry file.

Q. That is the last line under the heading "Gulf Coast Line"? A. That is correct.

Q. Those totals are not to be found anywhere in the journal entry file or the journal entry; is that right?

A. That is correct.

Q. Is there anything missing in that line?

A. He missed a very important part of that entry.

Q. How does that read, the omitted part?

A. "Credit advances from Missouri Pacific Railroad, $1,261,009.84."

Q. What is the meaning of that line as it is set up there?

A. The omission shows the Gulf Coast Lines became indebted to the Missouri Pacific as a result of this transaction. I think it a very important omission.

Q. That is the one item that shows Gulf Coast Lines became indebted to Missouri Pacific? A. Yes, sir.

The Court: Show it to me.

Mr. McConaughy: You can't find it, Your Honor, because it is not there.

Q. That is the one item that would have shown, among these papers in the files of the Missouri Pacific and Gulf Coast Lines, that the Gulf Coast Lines became indebted to the Missouri Pacific in the amount of one million, two hundred thousand and odd dollars? A. That is correct, sir.

Q. What is your next point?

A. Well, attached to that journal entry was a letter referred to by Mr. Brandwen, from Mr. Wyer, relating to the amount of $1,400,000.

Q. Copy of Mr. Wyer's letter appears as the last item on the third page of Comstock Exhibit 134? A. It does, yes.

Q. That letter referred to $1,400,000. and Mr. Brandwen inquired of you where you could find $1,400,000. in advances from the Missouri Pacific: Do you recall that?

A. Yes; that was—

Q. Can you account for why $1,400,000. was mentioned at the date of that letter; do you recall the date of the letter?

A. The letter was—I don't recall the date of the letter.

Q. Do you have a copy of Comstock Exhibit 134?

A. The letter is dated August 22, 1932.

Q. When was this transaction consummated?

A. In October, 1932.

Q. Go ahead with your explanation.

A. There was a difference between the $1,400,000. and the amount that was finally agreed upon for settlement, because between that time and October 31, 1932, some offset settlements were made between the Gulf Coast Lines and the I.-G. N. which brought the amount down to $1,261,009.

Q. Now, Mr. Eckert, with the corrections which you have noted in your testimony, would you say that Comstock Exhibit 134 correctly sets forth the transactions as shown by the books of the companies involved, the three companies?

A. Yes; with the changes that I referred to I think it reflects the true situation.

Q. Now, then, will you kindly summarize? There has been a lot of talk about that transaction. Kindly summarize what happened there. First start out by describing who owed who, and what was done.

A. The Gulf Coast Lines owed the L.-G. N. money which they couldn't pay, and the L.-G. N. also owed the Missouri Pacific money. It was decided then that the L.-G. N. would be relieved of that debt; in other words, by passing it over to the Gulf Coast Lines, and the Missouri Pacific would receive credit from the L.-G. N. for the amount it owed it. In other words, it was to my mind as good as a cash transaction, because it represented amounts that were really due as between the roads and if offset settlement could have been made it would have been considered the same as cash.

Q. These items represented advances by the L.-G. N. to the Gulf Coast Lines, is that right?

A. Not advances; they covered bills against the various Gulf Coast lines covering various and sundry items, and that was not in cash advances, it was material and supplies.

Q. In other words, the L.-G. N. was carrying the Gulf Coast Lines in this amount of money; is that right?

A. Yes, sir.

Q. Therefore, in effect it was borrowing from the Missouri Pacific to lend it to the Gulf Coast? A. Yes, sir.

Q. So those transactions adjusted that and made the Gulf Coast Lines liable to the Missouri Pacific directly?

A. That is right.

Q. For its own obligations? A. That is correct, sir.

Q. Going back to Group Exhibit 2, for identification: The next item I want to take up is an advance on February 1, 1933, of $210,000. You have exhibited an original letter from Mr. Wyer to Morgan Company to cover—

A. I have, sir.

(Here ensued private colloquy between the witness and Mr. McConaughy.)

Q. The next item is an advance in March, 1929, of $109,000.: Do you have some original document that describes that advance and a repayment thereon of $8,800.?

A. Yes, I have an original memorandum I prepared while I was still located in Houston, May 12, 1933, which shows this entire transaction.

Q. What else have you got?

A. I have also a draft drawn by Mr. A. T. Cole, Treasurer of the N. O. T. & M., against the Missouri Pacific Railroad, for $109,178.60, and voucher of Missouri Pacific covering that advance.

Q. Wait a minute; let us complete the list—

A. I also have a statement prepared by me, under my supervision, at Houston, which reads—

Q. It shows the transaction, doesn't it? I just want to get that. A. Yes, sir.

Q. When was that prepared?

A. It was prepared in May, 1933.

Q. It was forwarded up here to Mr. Johnson at his office in the general course of business, wasn't it?

A. Yes, sir.

Q. That is all I want for the record. I am not going to offer those documents in evidence, but I would like to have you now tell us what those documents show, very briefly; make it as brief as you can.

A. They show that the Missouri Pacific advanced the New Orleans, Texas & Mexico—

Q. I forgot one item. Have you prepared a copy of an instrument by which the Missouri Improvement Company declared itself a trustee, in favor of the N. O. T. & M.?

A. Yes, sir.

Q. Is that a true copy of that deed (indicating document)? A. That is a correct, yes.

Mr. McConaughy: I would like to offer that in evidence.

(The document last offered in evidence was thereupon marked Group Exhibit 4.) [See Vol. of Exs. p. 241.]

Q. Now proceed with your explanation, please.

A. The documents show that the Missouri Pacific advanced the N. O. T. & M. $109,178., which the N. O. T. & M. applied to the purchase of about thirty acres of land at Corpus Christi, Texas, in the name of the Missouri Improvement Company. However, a Declaration of Trust was prepared for the land, leaving the ownership actually with the N. O. T. & M.

Q. The Declaration of Trust to which you referred is Group Exhibit 4, is that right?

A. Yes. In connection with that Declaration of Trust it refers to certain—

Q. Exceptions?

A. Exceptions of property, and the record shows that Cage Hardware Company purchased 17,500 square feet of this land, for the sum of $7,500., payable to the N. O. T. & M. in monthly installments. As I now recall it, that was finally paid off. Norvell Wilder Supply Company purchased 15,400 square feet at a price of $8,800. in cash.

Q. What happened to that $8,800.?

A. Missouri Pacific and N. O. T. & M. ledgers show that this sum was applied by N. O. T. & M. in payment of an equal amount of principal of the above mentioned advance of $109,178.60.

Q. And the third parcel?

A. The third parcel was 3.266 acres, sold to the S. A. U. & G.

Q. That acreage is 3.266; right?

A. 3.266 acres for $11,832., payable to the N. O. T. & M., which at December 31, 1932, remained unpaid.

Mr. McConaughy: Your Honor, that completes, together with the proof that was offered on behalf of Comstock, the proof of each and every of the advances shown on ICC Exhibit 226.

Q. Mr. Eckert, we now come to the repayments. Group Exhibit 2 shows the first repayment, in the amount of $500,000. on June 4, 1930; is that right? A. Yes, sir.

Q. Have you anything to show how that repayment was applied? Look at that, is that it (indicating)?

A. Yes. That is $500,000. applied in payment of advances.

Q. What is this document you were just looking at?

A. This is a letter from F. P. Johnson, the late Mr. F. P. Johnson, addressed to me at Houston, dated June 11, 1930.

Mr. McConaughy: I offer that.

Mr. Biggs: I object to the offer of that in evidence, and move that Mr. Eckert's evidence in substantiation of same be stricken. The claim in this case begins March, 1929. This payment of $500,000. was made after March, 1929—

sometime in 1930. They are now trying to offset that against alleged indebtedness prior to March, 1929, and therefore it is inadmissible.

Mr. McConaughy: I might as well explain this now, Your Honor. I think if you will turn to ICC Exhibit 226, which is the basic exhibit covering these advances, you will see there are listed there at the top advances beginning November 30, 1928, $300,000.—1, 2, 3, 4 items—and the last of those four items is February 28, 1929, $250,000.

(Here ensued private colloquy between the Court and Mr. McConaughy.)

The first items are $300,000., $100,000., $150,000. and $250,000. The first began November 30, 1928 and the last of the four is February 28, 1929.

This ICC Exhibit is set up this way because the repayments shown here are applied, as I am about to show to those earlier items, and they thus leave a balance at the foot of the page of $10,565,226.

Your Honor will recall that Mr. Delaney testified concerning these advances and he applied all of these repayments to advances beginning in March, 1929, whereas they should have been applied—and that is what I am trying to prove now—to earlier advances. These earlier advances and repayments against them must be brought in in order to straighten this out.

Mr. Biggs: Your Honor, this involves a very simple proposition. The claimant says he has an account beginning on January 1st and running through June 1st—this is a hypothetical case—and that as a result the defendant owes blank dollars. All right. If the defendant comes in and shows that during the period from January 1st to June 1st $500,000. was paid on account that is certainly offset against the claim, and that is exactly what we have shown in this case. The Missouri Pacific says their claim begins March, 1929, and is for cash advanced—

The Court: March, 1929?

Mr. Biggs: That is the beginning of this claim. Now, here is an item of $500,000. after the beginning of the claim started to run, after March, 1929. Mr. Delaney set

up in an exhibit this $500,000. as a credit against advances since March, 1929, and it certainly should be in as long as their claim starts March, 1929—this item is an offset item, because it was paid in 1930. Now they are trying to offset this $500,000. against alleged advances made before March, 1929.

Mr. McConaughy: Here is perfectly plain proof contrary to Mr. Delaney, that this $500,000. did not apply to advances about which Mr. Delaney talked, or to advances which are the basis of their claim. Therefore, we have got to put this in to disprove Mr. Delaney's testimony.

Mr. Biggs: We further object, because that is evidence got up in this way, not by an officer on behalf of the N. O. T. & M., but by an officer on behalf of Missouri Pacific, and is self-serving.

Mr. McConaughy: Q. Mr. Eckert, you held the office of auditor of the Gulf Coast Lines and you received that letter? A. Yes, sir.

Q. What did you do when you got that letter?

A. Applied the amount as indicated.

Q. You made a check of it first to find out whether it was right? A. That is correct.

Q. Being right, you entered it in the account that way?

A. Entered it in the books that way.

The Court: Objection overruled.

(The exhibit was thereupon marked Group Exhibit 5.)

Mr. McConaughy: I would like to have this memorandum from Mr. Johnson to Mr. Eckert, of June 11, 1930, showing a payment on account of advances in the amount of $500,000., marked as an exhibit, and offer it in evidence.

Mr. Biggs: We object to it.

The Court: Overruled.

(The exhibit last offered was thereupon marked Group 5.) [See Vol. of Exs. p. 243.]

Mr. McConaughy: Q. Will you kindly state how that $500,000. repaid on June 4, 1930, was applied?

A. Applied to payment on advances theretofore made, as follows: November 30, 1928, $300,000.—

Q. Applied to principal? A. Applied to principal.

Q. $300,000. applied to principal of the November 30, 1928 advance?

A. That is correct. December 31, 1928, $100,000.—

Q. That means the advance made on December 31, 1928, was paid to the extent of $100,000.: Right?

A. That is correct. January 31, 1929, payment on account of principal of $100,000.

Q. Making a total of $500,000.?

A. Making a total of $500,000.

Q. What was the next repayment on account of these advances? A. The next repayment was $250,000.—

Q. Wait a minute. What was the date of that?

A. The letter from Mr. Johnson to me at Houston, May 4, 1931, in which he advised that the remittance of $250,000. made by the N.O.T. & M. had been applied in partial payment of interest due the Missouri Pacific on advances, reducing the amount to $117,430.56, as of April 30, 1931.

Q. Is that a photostatic copy of the memorandum that you just referred to (indicating)? A. Yes.

Mr. McConaughy: I offer that in evidence.

(The exhibit last offered in evidence was thereupon marked Group Exhibit 6.) [See Vol. of Exs. p. 243.]

Mr. Biggs: For the same reasons I move that the evidence be stricken out as Group Exhibit 6.

Mr. McConaughy: Q. Now, the next payment was as of what date? A. It was a letter—

Q. Wait a minute, Mr. Eckert. Do you have ICC Exhibit 226 there? A. Yes, sir.

Q. There is an eighty-three dollar error in computation of interest, which I would like to have you point out in that exhibit.

Mr. Biggs: 226?

Mr. McConaughy: Yes.

The Witness: The fourth item under the column headed "Interest charge", the fifth item, leaves $4,217.00.

Q. What should it be? A. It should be $4,300.

Q. There is another one there, isn't there?

A. Brought down in the amount of $249,917.00.

Q. What column?

A. In the column "Interest Paid" should be corrected to $250,000.

Q. In other words, on each side of the column the same error in the amount of eighty-three dollars was made, is that right?

A. That represents approximately one day's interest.

Q. Everything in both those columns, below the date May 31, 1931, is correct again? A. Is correct.

Q. Below that item? A. That is correct.

Q. All right. That is all on that.

The Witness: This letter—

Q. Wait a minute. The next one is repayment on August 27, 1931, $200,000.; is that right? Have you anything to show how that was applied?

A. I have a letter from Mr. Johnson dated August 27, 1931, addressed to me at Houston.

Q. Is that a photostatic copy of the letter?

A. That is, sir.

Mr. McConaughy: I offer that in evidence.

Mr. Biggs: Same objection.

The Court: Overruled.

(The photostatic copy of letter last offered in evidence was marked Group Exhibit 7.) [See Vol. of Exs. p. 244.]

Mr. McConaughy: Q. How was it applied, the $200,000.?

A. It was applied, $192,387.93 to payment of interest to July 31, 1931 and $7,612.07 in part payment of advances made January 31, 1929.

Q. The next repayment was October 19, 1931, in the amount of $75,000.: Right? A. That is correct, sir.

Q. Do you have anything to show how that was applied?

A. I have a photostatic copy of a letter from Mr. F. P. Johnson, addressed to me at Houston, dated October 19, 1931.

Q. Is that a photostatic copy of the letter to which you refer (handing document to the witness)? A. Yes.

Mr. McConaughy: I offer that in evidence as Group Exhibit 8.

Mr. Biggs: Same objection.

The Court: The same ruling.

(The photostatic copy of the letter last offered in evidence was marked Group Exhibit 8.) [See Vol. of Exs. p. 244.]

Q. The next item is December 28, 1931, $100,000 repaid.
A. I didn't give you how that was applied.
Q. How was that $75,000 repaid on October 19, 1931 applied?
A. Part payment of advance made January 31, 1929, $23,594.26.
Q. That was applied to the principal of that advance?
A. That was applied to the principal of that advance and in payment of interest to September, 1931, $51,405.74.
Q. The next repayment was December 28, 1931, $100,000. Have you anything to show how that was applied?
A. I have photostatic copy of a letter from Mr. Johnson addressed to me at Houston, dated December 28, 1931.
Q. Is this the photostatic copy of the letter (indicating)?
A. It is, sir.

Mr. McConaughy: I offer that in evidence.

Mr. Biggs: Same objection.

The Court: Same ruling.

(The photostatic copy of the letter last offered in evidence was marked Group Exhibit 9.) [See Vol. of Exs. p. 245.]

Q. How was it applied?
A. In payment of balance of principal, made January 31, 1929, $18,793.67; to payment of principal, made February 28, 1929, $21,208.58; to payment of interest November, 1931, $59,997.75.
Q. With that payment of $18,793.67 against the advance of January 1, 1929, the first three items of advances on ICC Exhibit 226 are completely repaid? A. Yes.
Q. The next repayment was on February 27, 1932, in

the amount of $525,000. Have you anything to say how that was applied?

A. I have a letter from Mr. C. B. Milson.

Q. Who was he?

A. Assistant Auditor of the St. Louis office.

Q. Of the Missouri Pacific Railroad?

A. Of the Missouri Pacific Railroad. The letter is dated March 10, 1932.

Q. That is addressed to you?

A. That is addressed to me at Houston.

Q. Is that a photostatic copy of it? A. Yes, sir.

Mr. McConaughy: I offer that in evidence.

Mr. Biggs: Same objection.

The Court: Overruled.

(Photostatic copy of the letter last offered in evidence was marked Group Exhibit 10.) [See Vol. of Exs. p. 245.]

Q. How was that applied, that $525,000.?

A. Applied in payment of balance of principal, made February 28, 1929, $228,791.42; in part payment of principal, made March 30, 1929, $232,083.51.

Q. That payment of $228,791.42 of principal against the balance due for the advance of February 28, 1929, completes the first four items on ICC Exhibit 226?

A. That is correct.

Q. Mr. Eckert, I refer you to Comstock Exhibit 1 for identification, which is copy of proof of claim. That states that it is based on advances for operation, interest, and so forth, from March, 1929, to February, 1933, and that Proof of Claim was made out on August 28, 1933; is that right? A. Yes, sir; that is correct.

Q. Therefore, on August 28, 1933, the first four of those items of ICC Exhibit 226 had been completely repaid?

A. They had been repaid prior to that date.

Q. Thus, the Proof of Claim properly refers to advances made from March, 1929, to February, 1933, both inclusive? A. That is correct, sir.

Mr. McConaughy: I would like to offer in evidence now—it has only been marked for identification—Comstock Exhibit 1.

Mr. Biggs: We, of course, object to their right to offer it.

Mr. McConaughy: I am not sure it is needed. The original Proof of Claim has been filed, but whether or not—I should like to have it offered in evidence.

The Court: You may do so.

(The document heretofore offered as Comstock Exhibit 1 for identification, was thereupon marked Group Exhibit 11.) [See Vol. of Exs. p. 246.]

Mr. McConaughy: Q. To what was the remainder of that $525,000. applied?

A. The remainder of that $525,000. was applied in payment of interest.

Q. You gave that, I think, $64,125.07?

A. No, I don't think I did.

Q. All right. A. $64,125.07 to January, 1932.

Q. There was a further principal application, was there not?

A. Yes, part payment of principal made March 30, 1929, $232,083.51.

Q. On ICC Exhibit 226 that advance of March 30, 1929 was referred to as March 31, is that right? A. Yes, sir.

Q. They are obviously intended to be the same advance?

A. March 31.

Q. The next item is repayment on July 26, 1932, of $100,000.; is that right? A. Yes, sir.

Q. Do you have anything to show how that was applied?

A. I have a letter from Mr. J. E. Anderson.

Q. Who was he?

A. Assistant to the Executive Vice-President at Houston.

Q. Officer of the N. O. T. & M.?

A. Yes. It was addressed to Mr. E. F. Barnes, Jr., who was at that time office assistant in Mr. Baldwin's office in St. Louis.

Q. He was an employee of the Missouri Pacific? A. Yes.

Q. Is this a photostatic copy of that letter?

A. It is, sir.

Mr. McConaughy: I offer it in evidence.

Mr. Biggs: Same objection.

The Court: Overruled.

(The photostatic copy of letter last offered in evidence was marked Group Exhibit 12.) [See Vol. of Exs. p. 246.]

Mr. McConaughy: Q. That shows the full $100,000. was applied to interest, is that correct? A. Yes, sir.

Q. The next repayment was on August 1, 1932, in the amount of $60,000. Comstock Exhibit 27 shows that that was applied to principal? A. Yes.

Q. And you agree with that, don't you?

A. Yes, that is correct.

Q. The next item was August 26, 1932, in the amount of $225,000. Have you anything to show how that was applied?

A. That was applied—I don't have any letter on that.

Q. Is that the letter of August 30, 1932?

A. Oh, yes. I had a letter from Mr. F. P. Johnson, photostatic copy of a letter from Mr. F. P. Johnson.

Q. To you; right?

A. Addressed to me, dated August 30, 1932.

Q. Is that a photostatic copy of the letter (indicating)?

A. It is.

Mr. McConaughy: I offer that in evidence.

(The photostatic copy of letter last offered in evidence was marked Group Exhibit 13.) [See Vol. of Exs. p. 247.]

Q. Referring to Group Exhibit 13, how was that sum of $225,000. applied?

A. In part payment of principal made March 30, 1929, $56,828.15, and in payment of interest to August 31, 1932, $168,171.85.

Q. The next repayment was on January 3, 1933, in the amount of $79,000. Comstock Exhibit 27 shows that that was applied to principal; is that right?

A. That is correct, sir.

Q. Can you identify the repayment a little more precisely than Comstock Exhibits do?

A. Well, there is an entry made on that at the time, Missouri Pacific book, showing application of principal, of December 30, 1932—

Q. In other words, it was applied to the December 30, 1932, advance of $79,000.? A. That is correct, sir.

Q. And the Missouri Pacific ledgers show that?

A. They do, yes, sir.

Q. The next repayment of March 29, 1933, was in amount of $100,000.? A. Yes, sir.

Q. Have you anything to show how that was applied?

A. Photostatic copy of letter from Mr. F. P. Johnson, addressed to me at Houston, March 29, 1933.

Q. Is that a photostatic copy of it (indicating)?

A. Yes, sir.

Mr. McConaughy: I offer that in evidence.

Mr. Biggs: Same objection.

The Court: Overruled.

(The photostatic copy of letter last offered in evidence was marked Group Exhibit 14.) [See Vol. of Exs. p. 247.]

Q. How was that applied?

A. It was applied in payment of interest on advances.

Q. Your next item of repayment is on March 29, 1933, in the amount of $75,000.; is that right? A. Yes, sir.

Q. Have you anything to show how that was applied?

A. I have a photostatic copy of a letter from Mr. F. P. Johnson, addressed to me at Houston, March 29, 1933.

Q. Is that a photostatic copy of the letter (indicating)?

A. It is, sir.

Mr. McConaughy: I offer it in evidence.

(The letter last indicated was marked Group Exhibit 15.) [See Vol. of Exs. p. 248.]

Q. How was that $75,000. applied?

A. It was applied in payment of interest on advances.

Mr. Biggs: I make the same objection to that.

The Court: Overruled.

Mr. McConaughy: Q. Going back to Comstock Exhibits showing the application of the amounts that you have just testified to as repayments, or certain of them, what was wrong with his method of applying them?

A. He applied them all, repayments all to principal, and he didn't include them all.

Q. The ledgers of the Missouri Pacific and of the N. O. T. & M. show each of these repayments applied in the manner in which you have just described; isn't that correct? A. They do, sir, yes.

The Court: You say he applied them all to principal, but he didn't apply them all.

The Witness: He didn't list all of the amounts, all of the repayments. He didn't list them all.

Mr. McConaughy: Q. In other words, he omitted certain of the repayments, and others he applied all to principal whereas some of them were applied in whole or in part to interest, as you have just testified? A. That is correct, sir.

Q. Mr. Delaney could have seen that if he had looked at the ledger; isn't that right? A. Yes, he could have.

Q. Now, then, Mr. Delaney also mentioned the Treasurer's cash book, where he found some of these items: Would the Treasurer's cash book control the accounting here, or the ledger?

A. It would not. The cash book would simply show the lump sum advanced and the ledger would show the accounting.

Mr. McConaughy: Your Honor, I would like to offer Group Exhibit 2 for identification, in evidence, since we have proved it. [See Vol. of Exs. p. 239.]

Mr. Biggs: We object to the offer of Group Exhibit 2, for the reason that the first four items on Group Exhibit 2 show clearly by their dates that they were prior to March, 1929, and also purports to try to allocate certain repayments between principal and interest, and as all of the exhibits in this case dealing with that which I have objected to, are exhibits in the form of statements from the officers of the parent company, the Missouri Pacific, directing Mr. Eckert, in most cases, how to make these advances, they are all, in my opinion, self-serving, and as the information contained in this exhibit coincides with those prior—

The Court: Are directions given in the letters of transmission?

Mr. Biggs: That is right.

The Court: Objection overruled.

Q. Mr. Eckert, I want to make sure each and every one of the items—I want to make sure about this—are each and every one of the items of advances from the Missouri Pacific to the N. O. T. & M. and of the repayments from the N. O. T. & M. to the Missouri Pacific shown on the ledgers of those two companies respectively?

A. They are, sir.

Q. Each and every one is supported by a ledger entry?

A. Yes, sir.

Q. And when you got a memorandum from Mr. Johnson, such as those, photostatic copies of which have been offered here, did you just accept Mr. Johnson's word for it, or did you check it? A. We checked them.

Mr. Biggs: Just a minute. I object to Mr. McConaughy leading this witness.

The Court: Overruled.

A. We checked them.

Q. In other words, you made sure yourself whether they were right before you entered them in your ledger?

A. I think if you would look at the last two photostatic copies of letters that were submitted, I think they are exhibits.

Q. Let's get the numbers agreed on. You are referring to Group Exhibits Nos. 14 and 15?

A. 14 and 15. You will find a notation thereon from the general accountant in the Houston office, Mr. Banks, who was then my chief clerk, in which he indicates that remittance was so applied, and the amounts agree with our accrual on both, as well as two letters that notation appears, and that was done in each case.

Q. In each case your office checked the items?

A. Yes, sir.

Mr. McConaughy: That is all I have for Mr. Eckert.

Mr. Biggs: I would like to have a five-minute recess before examining.

The Court: Five-minute recess.

(Recess, five minutes.)

Cross Examination,

By Mr. Biggs:

Q. Mr. Eckert, these papers which were handed to you by Mr. McConaughy, but have not been offered in evidence, which pertain to the Missouri Improvement Company transaction: I will ask you to examine those papers and tell me at what date the property in question was deeded to the Missouri Improvement Company?

A. That was dated March 23, 1929 on this.

Q. Is that from records of the Missouri Pacific, or where are those records? A. N. O. T. & M.

Q. Those are N. O. T. & M. records? A. Yes.

Q. What is the date of the advance check?

A. Oh, dated March 25, 1929.

Q. March 25, 1929.

A. That is the date of the draft, yes, sir, drawn on the Missouri Pacific.

Mr. Biggs: Where is your Exhibit No. 4?

Mr. McConaughy: Shows the same date.

(Handing a document to Mr. Biggs.)

Q. What was the date of the execution of Group—that is Group Exhibit No. 4?

A. Well, the date the Missouri Improvement Company executed this declaration of trust was February 3, 1932, but—

Mr. Biggs: (Interrupting) That is all.

The Witness: I would like to explain that, though.

The Court: You may.

The Witness: The Missouri Pacific at that time was buying a lot of property in the name of the Missouri Improvement Company.

Q. At what time, Mr. Eckert?

A. Well, probably prior to this matter, probably prior to February, 1932, probably about 1929, and a lot of that property was purchased.

Q. Just one minute, Mr. Eckert. Were you at that time connected with the Missouri Pacific?

A. I was connected with the N. O. T. & M., yes, sir.

Mr. Biggs: I object to any testimony on the part of Mr. Eckert in regard to what the Missouri Pacific was doing.

The Court: Depends on how he knew it.

Q. You were not an officer or employee of the Missouri Pacific? A. Not at that time.

Q. And your offices were down at Houston at that time?

A. Yes.

Q. And the Missouri Pacific offices were in St. Louis?

A. Yes, sir.

Q. Continue with your testimony.

A. Well, I simply wanted to say that a lot of this property was bought in the name of the Missouri Improvement Company for the express purpose of keeping it out from under the mortgage in the event later some of this property should be sold.

Q. Are you testifying now of your own knowledge, Mr. Eckert?

A. Well, I know since I have been here; I have been here since 1938; I know something about it.

Q. This is since acquired, since 1938? A. Yes, sir.

Q. Not at that time?

A. Not at that time. And these declarations of trust were made at different times. This was probably made at the time they rounded these things up and made these declarations. The property, however, never was—Missouri Improvement Company never was the beneficial owner of this property.

Q. Did the N. O. T. & M. have any interest in the Missouri Improvement Company? A. Not that I know of.

Q. Who is Mr. F. P. Johnson, Mr. Eckert?

A. He is the late chief accounting and financial officer of the Missouri Pacific Railroad. He passed on November 11, 1938.

Q. Was he an officer, director, employee of the New Orleans, Texas and Mexico Railroad Company?

A. He was chief accounting and financial officer of all the lines, yes, sir.

Q. He was an officer of the New Orleans, Texas and Mexico? A. Yes, sir.

Q. Duly elected?

A. I think he was. Also vice-president later on.

Q. Was he in 1930?

A. 1930, yes, sir. I think he was vice-president at that time.

Q. Of the New Orleans, Texas? A. Yes.

Q. In 1929?

A. I don't recall the exact date, but I think he was.

Mr. McConaughy: Look at Comstock Exhibit No. 17-B.

Q. Whose signature is this, Mr. Eckert? I overlooked it when you testified about that.

A. C. B. Milson. He was assistant auditor of the St. Louis office at that time. Now retired.

Mr. McConaughy: What number is it?

Mr. Biggs: Ten.

Q. Was he connected with the N. O. T. & M. in any way?

A. No, sir. He was assistant auditor in the St. Louis office.

Q. Mr. Johnson had his office in St. Louis, though?

A. Oh, yes.

Q. He was the chief accounting officer of the Missouri Pacific? A. Chief accounting and financial officer.

Mr. Biggs: I believe that is all for the present. I would like an opportunity—I may want to recall Mr. Eckert.

Mr. McConaughy: That is all.

Mr. McConaughy: I would next like to call Mr. D. R. Rodgers.

D. Rucker Rodgers,

a witness of lawful age, being duly produced, sworn and examined, testified, on behalf of the Institutional Group of Bondholders, as follows:

Direct Examination,

By Mr. McConaughy:

Q. Will you state your name, Mr. Rodgers?

A. D. Rucker Rodgers.

Q. Where do you live?

A. University City, St. Louis County, Missouri.

Q. Will you kindly state your railroad experience?

A. My railroad experience is approximately 42 years.

Q. And what has been your experience, where did you start in? A. The mechanical branch of the railroad.

Q. Are you now connected with the Missouri Pacific?

A. Yes.

Q. And what office do you hold with the Missouri Pacific? A. Assistant to the chief mechanical officer.

Q. And as such, what are your duties?

A. In general charge as assistant to the chief mechanical officer, maintenance.

Q. What matters are within your jurisdiction?

A. Appropriate matters, general conduct of business for the chief mechanical officer.

Q. And that covers freight cars, passenger cars, locomotives? A. Yes. And shop equipment.

Q. And shop equipment. Mr. Rodgers, have you prepared an exhibit giving certain data on equipment for the Gulf Coast Lines for the period, 1920 to 1923, 1924, and for a period, 1925 through 1931, inclusive, showing averages?

A. Yes; I have had those prepared from the records in the Houston office.

Q. That exhibit—what did you say was the source of that exhibit? What is the source of the exhibit?

A. The records in the Houston office.

Q. Have you some extra copies of that exhibit?

A. Yes. (The witness produces some copies.)

Q. Now, by Houston office, you mean the Gulf Coast Lines? A. Gulf Coast Lines' office, yes, sir.

Q. Now, freight cars and locomotives, and passenger cars on the Gulf Coast Lines come within your jurisdiction? A. Yes.

Q. Do they not? A. Yes.

Mr. McConaughy: I would like to have this exhibit which you handed to me, Mr. Rodgers, marked as an exhibit in evidence.

(The said document was marked by the reporter as Group Exhibit No. 16.) [See Vol. of Exs. p. 249.]

Mr. Biggs: If Your Honor please, I think it well at this time to state, I wish to object to interrogation along this line, that we assume Mr. McConaughy is going to have this witness testify as to the figures of this exhibit. I would like to be heard on that, because this objection will run to a considerable line of testimony I am sure these parties are going to endeavor to introduce.

The theory on which we are resting this case, if Your Honor please, is this: that the officers and directors of the New Orleans, Texas and Mexico Railway Company acted and were in fiduciary relationship to the property. Now, there is no question that that is fundamental law that all officers or directors are in effect trustees, and our charge is that they have breached their trust, as in the Deep Rock case the Supreme Court has held that where in the relationship of parent and subsidiary, the officers, directors of the subsidiary breach their trust, that then if the subsidiary is in bankruptcy, that the parent corporation has no right to participate in the bankruptcy proceeding, and any claim that the parent corporation may have against the subsidiary is at the bottom of the ladder, so to speak.

Now, if Your Honor please, we introduced in the January hearing a great deal of evidence as to various breaches of trust upon the part of the officers and directors of the New Orleans, Texas and Mexico Railroad Company. However, our evidence on one facet of this case is limited to two exhibits—Exhibits Nos. 83 and 84-A and B. I do not believe Your Honor saw these exhibits when they were

introduced. Exhibit 83 is a letter dated April 16, 1931, and is addressed to Mr. Safford from Mr. Baldwin, and dated at New York.

The Court: There was some letter from Mr. Safford to Mr. Baldwin.

Mr. McConaughy: There are a lot of those in the exhibits.

Mr. Biggs: "Mr. Safford: I want to impress upon you again"—

The Court: (Interrupting) Is that a letter from Mr. Safford to Mr. Baldwin?

Mr. Biggs: No. From Mr. Baldwin to Mr. Safford.

> "I want to impress upon you again the fact that although it may necessitate a much more drastic curtailment of expense than you have ever had or anticipated, the NOT&M must earn and pay its dividend this year"—

The Court: (Interrupting) Yes, I read that letter, or heard it read.

Mr. Biggs: I may be wrong about that, Your Honor. I mean, I am stating this in good faith. I don't remember it myself, very frankly.

> "must earn and pay its dividend this year and have $100,000 left in addition.
> In this connection I want further to impress you with the necessity of curtailing expenditures chargeable to Additions & Betterments and only submit or authorize such items that cannot possibly be deferred."

In reply to that letter, Mr. Safford wrote Mr. Baldwin on April 28, 1931:

> "Mr. Baldwin:"—

This is Comstock Exhibit No. 84-A and B. All one letter. Just two pages.

> "Replying to your letter of April 16th written at New York setting a goal for Gulf Coast Lines net income for the year 1931.

We have made a survey of the situation and have prepared statements indicating what we believe is a conservative estimate of the probable gross earnings, and showing operating expenses and other charges as now programmed and which are very close to the irreducible minimum unless we make some further drastic reduction in service.

The realization of the goal indicated by you is largely dependent upon gross earnings. Actual results for the first [tree] months of the year reflect a decrease in total railway operating revenues of $1,324,505, and present indications are that April will show a further decrease of something like $350,000, making the total decrease for four months $1,674,000 as compared with the same period last year. The general conditions effecting this decrease will no doubt continue but will be offset in a measure by the special movement of East Texas oil to Baytown, Atreco, and Pt. Arthur, which traffic incidentally takes a very low rate per car, and by increased movement of citrus during the latter part of the year. The major trends in our freight traffic are shown in a separate statement attached. Passenger revenues are showing a very substantial reduction under last year and there are no prospects for improvement in the near future.

Taking all these factors into consideration, we are estimating gross revenues for the year at $12,889,034, a reduction of $2,539,387 or 16.4% under 1930. As stated above, for the first four months our gross revenue will be $1,674,000 or 26% behind the same period last year.

Our Maintenance of Way and Structures expenses are now programmed at $1,801,507, a reduction of $591,622 or approximately 25% under last year. We have reduced our operating expenses in connection with improvements from $382,600, as originally budgeted, to $55,100; this involves deferring all rail and ballast work. We plan on using 150,000 cross ties as compared with 212,000 last year.

Our present program for Maintenance of Equipment

means that we must hold our expenditures for the year to $2,102,409, a reduction of $621,756 or 22.8% under last year. This will be the lowest expenditure for Maintenance of Equipment since 1924 and provides running repair money only for locomotives and cars, except that we will be able to turn out about 15 Class 1, 2 and 3 repairs as compared with 49 last year. At the end of 1931 there will be about 30 engines which will have run out their assigned mileage.

Transportation Expenses are estimated at $3,654,538, a reduction of $508,189 under last year, the estimated transportation ratio being 28.35, as compared with 26.98 last year. This estimate gives effect to the reduction in passenger service on the Kingsville Division in January, amounting to approximately 242,000 train miles per annum; also, takes into consideration a substantial improvement in freight train performance as a result of placing 1200-class engines on the Kingsville Division. The estimate further involves a very close check of our supervisory, yard, and station forces which is now being done. The increase in transportation ratio anticipated is entirely due to the low level of earnings.

We will not be able to show much reduction in hire of freight cars because of the fact that such increases as we anticipate in freight traffic will be largely in oil and vegetables, involving increase in private line mileage.

Net income for the year on this basis is estimated at $457,519, a reduction of $644,382 under last year and $680,581 under the goal set by you in your letter mentioned above.

The net result falls far short of what you want to accomplish and I realize this is disappointing and am still hopeful we can improve it and we shall make every possible effort to do so. Our present program for MofW and MofE is materially under last year"—

That is Maintenance of Way and Maintenance of Equipment—

"and we have felt that we have gone as deeply into

these expenditures as we could without impairing, the standard of service, but we will continue to check this further to see what more can be done, in recognition of your request."

Now, pardon me for reading that, but I think it is very fundamental.

The Court: Is there something in that indicates breach of trust?

Mr. Biggs: Absolutely. I think it very clearly indicates that the drastic reduction in all expenditures for the maintenance of this railroad, and as these drastic reductions are directly made in order to earn enough money in accordance with the orders of Mr. Baldwin, that is, there had to be sufficient to pay the dividends and have a hundred thousand on top of it, and as the dividends amount to over a million dollars a year—that is what they call the regular seven per cent dividend.

Now, as I stated, that is the evidence that we have offered on this one facet of this case, but any evidence the Institutional group wishes to offer contrary to that is, I think frankly, pertinent, subject, of course, to our general exception to their right to produce any evidence, but any evidence other than that is, I believe, irrelevant to the issues here before the Court.

Mr. McConaughy: I just call the Court's attention to the fact that Mr. Safford was writing about Maintenance of Equipment, and that is one of the things we are discussing right here.

Mr. Biggs: But it goes back to Maintenance of Equipment in 1920. Do you want to go back to 1931 alone?

Mr. McConaughy: This exhibit goes from 1920 up to 1931.

The Court: Proceed.

Q. Now, Mr. Rodgers, this exhibit, Group Exhibit No. 16—

Mr. Biggs: Well, the record shows I object to all this line of questions?

The Court: Yes, the record may so show.

Q. (Continuing) and compares two periods, 1920 to 1923 and 1925 to 1931, and it gives the averages for those two periods for purposes of comparison. Now, Mr. Rodgers, I would like first to discuss locomotives with you. What are the significant factors shown by this Group Exhibit No. 16 with respect to condition of locomotives in the two periods?

A. I would say, first, locomotive failures, which indicates the ability of the locomotive to perform its service. For the first period, we had an average of 125 failures per year, or 21,000 miles per failure. In the second period, we had an average of 43 failures per year, or 111,000 miles. Included in that average for the second period was the year 1931, in which we had 17 failures, or 204,000 miles.

Q. That is 204,000 miles per failure? A. Per failure.

Q. In other words, for the two periods, your locomotives were running 21,000 miles per failure in the first period, and 111,000 miles in the second period? A. Yes.

Q. Now, that is an indication to a railroad man of substantial improvement of locomotives, isn't that correct?

A. Very substantial.

Mr. Biggs: Just a minute. I object to leading the witness.

The Court: Overruled.

Mr. McConaughy: Your Honor, I would like to explain the reason why I asked Mr. Rodgers to prepare this exhibit comparing the two periods. You will recall that Comstock proved that the Missouri Pacific acquired control of the Gulf Coast Lines by a contract signed in May, 1924, and that the officers of the Missouri Pacific took over on the 1st of January. That is the reason why I am taking this independent operation period and comparing it with the later period.

Q. Now, is there any other factor that is an indication of condition of locomotives?

A. Yes. We have under the Federal law inspectors of the Bureau of Locomotive Inspection of the Interstate Commerce Commission who inspect locomotives at various times through the year. They check all defects, report de-

fects to us and to Washington. And for the first average period, 1920 to 1923, inclusive, the average of 83 locomotives was inspected, 50 or 60.3% were found defective.

Q. That would indicate a very substantial improvement in the condition of locomotives between the two periods?

A. Indicates a very substantial improvement to us.

Q. Favoring the second period? A. Yes.

Q. As regards locomotives, would you say that at the end of 1931 the locomotive condition was good? A. Yes.

Q. On the Gulf Coast Lines? A. Yes, sir.

Q. Would you say it was better than it was at the end of 1924? A. Yes.

Q. Much or little? A. Substantial.

Q. Substantially better. Now, what does your exhibit, Group Exhibit No. 16 show with respect to freight cars of the Gulf Coast Lines in the two periods, what are the significant features shown there?

A. During the second period, the Gulf Coast purchased or built, 1,455 new freight cars, which represented 33% of the freight car ownership as of December 31, 1931. During the same period, 1925 to 1931, 1,295 old cars were retired. These were of light construction, wooden underframe or light steel underframe. 30-ton equipment, largely obsolete, and in a worn-out condition.

Q. Now, what about repairs?

A. Commencing in 1925 and continuing throughout 1931, we extended our program of general and heavy repairs and we averaged per year repairs to 1,250 cars.

Q. Per annum. That is for the seven years?

A. That is for the 7-year period.

Q. Well, now, what would you say as to freight car condition, comparing it at the end of 1924 with the end of 1931? A. Substantially improved.

Q. Substantially improved. Now, how about passenger cars?

A. Passenger cars, during the 1925 to 1931 period, we purchased 26 new all steel passenger cars, representing 22% of the ownership, December 31, 1931.

Q. Now, what about retirements?

A. 1925 to 1931, we retired 56 light wood body, including underframe and wood superstructure, obsolete cars, which were in a worn-out condition.

Q. Now, those were largely cars that were inherited from the previous period? A. Yes.

Q. All right, go ahead. How about repairs?

A. On repairs, we extended general repairs during this 7-year period to an average of 41 cars per year.

Q. Now, those were heavy repairs you are talking about, weren't they?

A. Yes, general and heavy.

Q. Did you say how many cars? A. 41.

Q. Now I would like to have you compare the condition of passenger cars at the end of 1924 with passenger car condition at the end of 1931?

A. Substantially better.

Mr. McConaughy: Substantially better. That is all I have.

Mr. Biggs: How about taking the noon recess?

The Court: Recess until two o'clock.

At this point, 12:25 P. M., a recess was had until 2:00 P. M.

Mr. McConaughy: Your Honor, I have one or two more questions to ask Mr. Rodgers.

D. Rodgers,

having been heretofore duly sworn, upon resuming the stand, testified further as follows:

Direct Examination (Continued)

By Mr. McConaughy:

Q. Mr. Rodgers, when I asked you about the improvement of passenger car conditions, one period over the other, I don't think we made quite clear which period showed the improvement. Will you kindly state which period did show the improvement? A. 1925 to 1931.

Q. Now, will you kindly state what your official title was with the Gulf Coast Lines Companies?

A. Assistant to the chief mechanical officer.

Q. And this data that is shown in Group Exhibit 16 is taken from Gulf Coast Lines books? A. Yes.

Q. Now, in connection with your description of the improvement in passenger car condition, was there anything done about facilities for making passenger car repairs during the second period shown on Group Exhibit 16?

A. During the second period we constructed a new passenger car repair shop on the Gulf Coast at Kingsville, Texas.

Q. Would you say Mr. Rodgers, that the condition of the Gulf Coast Lines freight cars, passenger cars and locomotives was adequate in 1931, for the traffic needs of the Gulf Coast Lines? A. Yes.

Q. That is all.

Cross Examination

By Mr. Biggs:

Q. Mr. Rodgers, have you got this Exhibit No. 16?

A. Yes.

Q. Will you please tell me how many locomotives, if any, were purchased by NOTM or the Gulf Coast Lines in the year 1929? A. None.

Q. In 1930? A. None.

Q. In 1931? A. None.

Q. Now, as to freight cars, what does your exhibit show as to the number of freight cars purchased by the Gulf Coast Lines in 1929?

A. 120 cars were built new at company shops in 1929.

Q. Were those cars all built in 1929, as a result of orders in 1929, or were they the result of orders in 1928, or other years, if you know? A. 120 cars?

Q. That is right.

A. I would have to look at the records to answer that question.

Q. Will you please look at the records?

A. I don't have them with me.

Q. Will you let me know about that? A. Yes.

Q. During the course of this trial? A. Yes.

Q. How many freight cars were purchased in 1930?

A. None.

Q. In 1931? A. None.

Q. Now, as to the passenger cars, the same question.

A. Passenger cars?

Q. How many were purchased in 1929? A. None.
Q. 1930? A. None.
Q. In 1931? A. None.
Q. Now, Mr. Rodgers, in regard to your testimony in regard to locomotive failures, is this evidence as set out in this exhibit based on locomotives owned by the Gulf Coast Lines, exclusively; or does it include IGN locomotives, Missouri Pacific locomotive, or any other locomotives used on the Gulf Coast Lines?
A. It includes all locomotives that were in use on the Gulf Coast.
Q. Includes all locomotives? A. Yes.
Q. And that includes IGN locomotives?
A. They were not in use.
Q. Well, weren't there some in use during that period?
A. I couldn't say.
Q. Does it include any Missouri Pacific locomotives?
A. I couldn't say.
Q. It does include all locomotives?
A. It does include all locomotives.
Q. But you don't know whether it does include IGN and Missouri Pacific locomotives?
A. It includes all locomotives operating during those years.
Q. Will you find out for me when you are finding out the information on this other question as to whether or not IGN locomotives were operating over the line, or whether or not Missouri Pacific locomotives were operating over the lines of the Gulf Coast, and if so, how many of each?
A. I will have to get that information from Houston.
Q. Now,—

Mr. McConaughy: Your Honor, I object to that last request for information. The direct examination pertained to freight car, locomotive and passenger car condition. We are not going into the questions of title at all here. I don't think that is appropriate cross examination.

Mr. Biggs: If Your Honor please, the witness has testified that the locomotive failures were an index as to the condition of the locomotives. Now, the evidence is that

the Missouri Pacific bought this company as of about January 1, 1925. Now, if they were operating their own locomotives over it, or I. G. N. locomotives, whereas back in the first four year period they were N. O. T. & M., Frisco or something else, that is a definite factor in the picture.

Mr. McConaughy: I would like to have Mr. [Rodges] explain what the request means.

The Court: He may do that.

Mr. McConaughy: Q. How would you go about getting that information?

A. You would have to go to the car accountant's records in Houston.

Q. You would have to check every day during the period, isn't that right? A. Yes.

Q. (By the Court) How long would it take to do that, how many men and how long?

Mr. McConaughy: How many men do you think, and how long do you think it would take to answer that question?

Mr. Biggs: I am limiting it to locomotives.

The Court: What?

Mr, Biggs: I am limiting it to locomotives.

Mr. McConaughy: Q. Make it locomotives; how long do you think that would take?

A. I would say one man three or four days.

Q: (By Mr. Biggs) Wasn't it a fact, Mr. Rodgers, that certain locomotives of the Missouri Pacific were being used regularly over the Gulf Coast Lines and certain IGN locomotives were being used regularly over the Gulf Coast Lines, and the reverse was true, certain Gulf Coast Lines locomotives were being used over the IGN as a regular proposition?

A. I would have to check the records for those particular years to answer that.

Mr. McConaughy: Your Honor, the record in this pro-

ceeding shows that the Gulf Coast Lines was leasing locomotives from the IGN and the Missouri Pacific. That is already right in the record before the Interstate Commerce Commission.

Mr. Biggs: Shall I proceed, your Honor?

The Court: Yes.

Q. (By Mr. Biggs) Now, will you turn to that exhibit again, Mr. Rodgers? (Witness does so.)

Q. According to your exhibit, in regard to locomotive failures, you had one to every 302,000 miles in 1930, is that correct? A. Yes.

Q. And you had one to every 204,000 miles in 1931?

A. Yes.

Q. Is that any definite evidence that the locomotives were not kept and maintained in as good condition in 1931, as 1930?

A. 204,000 miles is good performance in any year.

Q. I know, but compared to 1930. A. Not as good.

Q. Not as good? A. No.

Q. Does it indicate that the locomotives were not in as good condition in 1931, as they were in 1930?

A. From a failure standpoint they did not make as good a record.

Q. They did not make as good a record. Also taking the years 1930 and 1931, your exhibit shows that $1,150,000 was spent in repairing locomotives in 1930, is that correct?

A. Yes.

Q. And only $811,000 was spent in repairing locomotives in 1931? A. Yes.

The Court: How much in 1930?

Mr. Biggs: $1,150,000, and $811,000 in 1931.

The Court: There was a good deal less traffic, wasn't there, in 1931, than there was in 1930?

Mr. Biggs: Yes, but the percentage of engine failures was much higher in 1931.

Q. Now, going down to freight car repair costs: In 1930, you spent $647,000 on freight car repairs? A. Yes.

Q. And in 1931, you spent $486,000, is that correct?

A. Yes.

Q. In passenger car repairs you spent $247,000 in 1930, and only $114,000, or less than 50% as much in 1931, is that correct? A. Yes.

Q. In maintenance of equipment you had 2,353 man hours in 1930, and only 1983 in 1931?

A. That is in millions.

Q. In millions? A. Yes.

Q. It has got thousands here.

A. All we have is thousands, and that figures out millions.

Q. And in maintenance equipment expenditures in 1930, you spent $3,083,000. and in 1931, you spent $2,269,000?

A. Yes.

Q. That is correct? A. Yes.

Mr. Biggs: I believe that is all for the present.

Redirect Examination

By Mr. McConaughy:

Q. The court inquired as to whether or not traffic had fallen off in 1931, is that correct, on the Gulf Coast Lines?

A. Yes.

Q. And your maintenance program was geared to the traffic requirements, isn't that true? A. Yes.

Q. That's all.

Mr. McConaughy: I next might call Mr. Kirkpatrick.

C. S. Kirkpatrick,

a witness of lawful age, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified on behalf of the Institutional Group as follows:

Direct Examination

By Mr. McConaughy:

Q. Will you state your full name, Mr. Kirkpatrick?

A. C. S. Kirkpatrick, Houston, Texas.

Q. You reside in Houston, Texas? A. Yes, sir.

Q. Will you kindly state your railroad experience?

A. I have been engaged in railroad location, construction and maintenance since 1900. I have occupied various positions from rodman to chief engineer of the Gulf Coast Lines, and International Great Northern, which I now hold. I have been chief engineer of the Gulf Coast Lines since 1916, and International Great Northern since 1925.

Q. Your authority to act in that capacity for both lines was granted by the Interstate Commerce Commission?

A. Yes, sir.

Q. And you now occupy the office of chief engineer of the Gulf Coast Lines and its subsidiaries? A. Yes, sir.

Q. Have you prepared an exhibit comparing maintenance data for the period 1920 to 1933, inclusive, for 1924, and for the period 1925 to 1931? A. Yes, sir.

Q. That relates to what railroad?

A. The Gulf Coast Lines, and subsidiaries.

Q. This is the exhibit to which you refer; is that right?

A. Yes, sir.

Q. Now, that exhibit is prepared from books and records of the Gulf Coast Lines Companies that you mentioned?

A. Yes, sir, and on reports made to the Interstate Commerce Commission.

Mr. McConaughy: I offer this [is] in evidence.

Mr. Biggs: If your Honor please, I wish to object to that on the same basis that I objected to the testimony of Mr. Rodgers.

The Court: Overruled.

Mr. Biggs: That it is irrelevant to any issue before the Court.

The Court: Overruled.

Mr. McConaughy: For the reasons I stated before, your Honor, we have selected the period 1920 to 1923, because that was prior to the Missouri Pacific control; we have set out 1924 separately, because Mr. Comstock has proved that in May of that year a contract was signed for the purchase of control of the Gulf Coast Lines; then we have taken as the second period on the second sheet of this ex-

hibit, the years 1925 to 1931, which were the period of Missouri Pacific control.

(Said papers were thereupon marked by the Reporter as Group's Exhibit 17, page 1, and Group's Exhibit 17, page 2, respectively, for identification, and the same were received in evidence.) [See Vol. of Exs. pp. 251-253.]

Q. (By Mr. McConaughy) That exhibit consists of two sheets. That is Group's Exhibit 17? A. Yes, sir.

Q. Now, Mr. Kirkpatrick, I would like to have you tell us a little about the condition of the Gulf Coast Lines properties, that is, the right-of-way, repair shops and things of that kind, beginning around 1920, what had gone just before 1920 that affected maintenance matters?

A. Well, the Gulf Coast Lines, like other railroads, was in federal control commencing in January, January 1, 1918, and ending March 1, 1920, and during that war period, maintenance was deferred in the way of ties, ballast, bridges.

Q. How about rail?

A. And some rail, quite a lot of rail.

Q. So that the Gulf Coast Lines emerged from federal control with a lot of deferred maintenance, is that right?

A. That is right.

Q. And how about additions and betterments?

A. Well, I haven't the figures directly in front of me but as I remember, additions and betterments averaged during that period around $250,000 a year.

Q. How would you generally describe the Gulf Coast Lines properties at that time?

A. Well, at the end of federal control we were in need of ties and ballast, and we had had a substantial amount of labor during the war, but we had been awfully short of material.

Q. Now, Mr. Kirkpatrick, I would like to have you take year by year the years 1920, 1921, 1922, and 1923, and describe very briefly what was done to the Gulf Coast Lines in the way of maintenance and improvements. Take the year of 1920, first.

A. 1920, there was laid 4,389 tons of new rail, and 1,857 tons of re-lay, and in 1921, there was 2,716 tons of new rail.

Q. I don't think you need to go into the— A. Details?

Q. Detail of that. I would rather have a more general description.

A. Well, at the end of 1923, and the average for the years 1920 to 1923, there had been 3,594 tons of new rail laid and 3,313 of re-lay. Cross tie renewals averaged for that same period 287,000 per annum, and patch ballast averaged 63,000 cubic yards per annum.

Q. What do you mean by patch ballast?

A. This ballast that you haul out to repair weak places in the track where the ballast shoulder has been used up, and in servicing the track.

Q. I notice your exhibit also mentions creosoted ties.

A. Yes, sir.

Q. Will you tell us what the use of creosoted ties does?

A. The use of creosoted ties increases the life of ties double, or more, saves labor in renewal in subsequent years.

Q. What kind of ties were in the Gulf Coast Lines track largely on the emergence from Federal control?

A. 95% of the ties were untreated.

Q. Untreated ties. How had that untreated tie situation improved up to the end of 1923?

A. Up to the end of 1923, there was 16.6% of the ties creosoted.

Q. Only 16%, roughly? A. Yes, sir.

Q. Now, what was the condition of bridges when you came out of Federal control? What sort of bridges were they? A. They were untreated pine structures.

Q. And that sort of bridgework is subject to more rapid deterioration than the creosoted, is that right?

A. Yes, sir, that is right.

Q. What is the relative life of an untreated bridge structure, and one that has been treated?

A. I would say untreated would be around 12 or 14 years; creosoted would be around 25.

Q. Now, creosoted ties and bridgework are considerably more expensive, aren't they? A. Yes, sir.

Q. What would you say in general about the condition of the Gulf Coast Lines at the end of 1923?

A. The Gulf Coast Lines at the end of 1923, needed ballast, needed ties, needed lining and surfacing.

Q. Was the roadbed capable of handling the fast speeds at which your trains were operated which carried that vegetable traffic north in later years, was the roadbed capable of handling that kind of traffic at the end of 1923? A. No, sir, it was not.

Q. In fact, did you have an experience down there at one time when the cars used to run off the track because of the roadbed condition?

A. Yes, sir, we had a good many derailments.

Q. Now, then, beginning in 1924, your exhibit shows that some more was expended on maintenance, is that right?

A. Yes, sir, at the beginning of 1924, it was necessary to make heavy expenditures on the railroad.

Q. And quite a bit was done in that year? A. Yes, sir.

Q. Now, I would like to take up the second period, 1925 to 1931. I am going to have you describe in general terms what was done to improve, if that was the case, the condition of the Gulf Coast Lines roadbed?

A. Well, during that period there was an average of 5,760 ton of rail laid, new rail laid, and 1700 tons plus of re-lay. One of the large items was an average renewal of cross ties of 482,400, and maintenance patch ballast was used at the rate of 103,000 yards a year, and during that time there was substantial amounts spent chargeable to additions and betterments on ballast.

Q. Now, what about the creosoted ties now in this period? I would like you to compare the condition at the end of 1923, with the condition at the end of 1931?

A. Well, at the end of 1931, 88.7% of the ties were creosoted.

Q. In other words, from 1923, with only 16% of creosoted ties, you had moved up to, what did you say, at the end of 1931? A. 88.7%.

Q. 88.7%? A. Yes, sir.

Q. What about bridgework done during that period, the second period?

A. During that period there was a total of 72,000 plus of feet of bridge renewed with creosoted material, an average of 10,300 feet a year.

Q. How did that compare with the condition at the end of 1923?

A. At the end of 1923, there had been a total of 31,000 feet of bridge renewed, during the period of 1920 to 1923, creosoted material. We started using creosote in 1920.

Q. Now, Mr. Kirkpatrick, have you prepared a statement showing additions and betterments made to the Gulf Coast Line 1925 to 1932, inclusive? A. Yes, sir.

Q. Is that it? A. Yes, sir.

Q. What is the source of the material there, is that taken from the books and records of the Gulf Coast Lines?

A. The books and records of the auditor and the engineering department.

Mr. McConaughy: I offer that in evidence.

Mr. Biggs: If your Honor please, I object to the offer of this evidence for the reasons previously given, and also because it is a self-serving statement.

The Court: Overruled.

(Said paper was thereupon marked by the Reporter as Group's Exhibit 18 for identification.) [See Vol. of Exs. p. 255.]

Q. (By Mr. McConaughy) Now, if we take the track condition at the end of 1931, you have testified that that improvement program, that it was expensive to put in that new rail and the creosoted ties and bridge material. What was the effect of that on subsequent operations of the Gulf Coast Lines?

A. Well, the fact was that we were able to spend less and needed less.

Q. In other words, you had gone through this heavy program in these years, and by about 1931, you were just beginning, you were just ready to realize the benefits of that program? A. That is right.

Q. Mr. Kirkpatrick, before you answer this question will you give Mr. Biggs a chance to object? Do you recall a conversation which you had with the late Mr. Safford about maintenance matters in 1931? In the first place, will you tell us who Mr. Safford was?

A. Mr. Safford was executive vice-president and had charge of the lines of the Gulf Coast and International Great Northern, and its subsidiaries.

Q. He was the chief executive down on the property, is that right? A. Yes, sir.

Q. Now, will you answer the question?

Mr. Biggs: What was the question?

Mr. McConaughy: I asked him if he recalled—

The Court: Read the question, Mr. Reporter.

(Question read)

Mr. Biggs: That is just a yes or no answer.

Q. (By Mr. McConaughy) All right, do you?
A. Mr. Safford—

Q. Just answer it yes or no. A. Yes.

Q. Will you give us the substance of the conversation? Now, just wait a minute.

Mr. Biggs: I object to that. The witness has stated that Mr. Safford is dead, and his giving this would be hearsay, purely and simply as to what Mr. Safford said, and would be self-serving upon the part of the witness.

Q. (By Mr. McConaughy) Well, I will ask you this question, Mr. Kirkpatrick: After that conversation occurred did you undertake to cut maintenance severely?
A. No, sir.

Q. Did you at any time, as you recall, in the period 1925 to 1931, inclusive, do you recall any time in that period that you could say that railroad, the Gulf Coast Lines, was under-maintained?

Mr. Biggs: Just a minute, I object to that; calling for a conclusion on the part of the witness and a self-serving statement.

Mr. McConaughy: It is shown he is an expert, your Honor.

The Court: Overruled. You may answer. Want to hear the question again?

The Witness: Yes.

The Court: Read it.

(Question read)

A. No, sir.

Q. (By Mr. McConaughy) As a matter of fact, Mr. Kirkpatrick, didn't the Gulf Coast Lines establish fast freights schedules between the valley and Kinder, Louisiana, during this period? A. Yes, sir.

Q. There was a very large shortening of the freight schedules in that period? A. Yes, sir.

Q. And you had to have a much better railroad to maintain those schedules, isn't that correct?

Mr. Biggs: If your Honor please, I hate to continually object, but he is certainly leading this witness, putting the answers in his mouth.

The Court: Yes, I think so. Objection sustained.

Mr. Biggs: I don't like to be objecting all the time.

Mr. McConaughy: These things are matters of record in this case.

The Court: I know, but sometimes it doesn't make any difference whether they are leading or not, but some of these questions, they shouldn't be leading.

Mr. McConaughy: That is all.

Mr. Biggs: If your Honor please, I frankly haven't had a chance to look at Exhibit 18, just a casual looking over it.

The Court: Want the court to take a recess?

Mr. Biggs: No, I have some definite questions I want to ask Mr. Kirkpatrick. I may ask leave to call him back.

The Court: All right.

Cross Examination,

By Mr. Biggs:

Q. Did I understand, Mr. Kirkpatrick, that during the period 1925 to 1931, there never had been any cut in maintenance of the Gulf Coast Lines, did I understand that was your answer to Mr. McConaughy's question?

A. Yes, sir.

Q. There never had been? A. Yes.

Q. There never had been any cut in maintenance during that period of time? A. He didn't ask me that.

The Court: What period of time, Mr. Biggs?

Mr. Biggs: 1925, through 1931.

A. I said there never had been any cuts that hurt us.

Q. (By Mr. Biggs) There never had been any cuts that hurt you? A. Yes, sir.

Q. But there had been cuts in maintenance?

A. Yes, sir, that is what we spent all that money to do; that was to save money.

Q. Now, your second page exhibit, in 1930, you laid 6,254 tons of new rail? A. Yes, sir.

Q. And in 1931, you laid only 2,494 tons of new rail, is that correct? A. That is right.

Q. Why the tremendous difference?

A. Our decline in use, the fact that we greatly improved the railroad, and laid a great deal of rail, a lot of rail previously, enabled us to do that. That is the reason it was done.

The Court: Q. The more you laid one year, the less you would probably have to lay the next, isn't that true?

A. Yes, sir.

Q. (By Mr. Biggs) That is less rail than was laid at any time between 1920 and 1931, is that not true?

A. I haven't checked that, but if it is so, it is so. That is one of the reasons we didn't need so much.

Q. Will you look at the exhibit and see if that is not correct? 2,494 tons is less rail than was laid at any time during the 1920 to 1931 period?

The Court: Where do you find that?

Mr. Biggs: It is right at the top line of this exhibit 17.

The Witness: Yes, sir, I believe that is less rail than was laid in any previous year in that period of time.

Q. How much re-lay rail did you lay in 1931?

A. Didn't lay any.

Q. I think it is safe to assume that that is less rail than

you laid at any other time between that period, is that correct?

A. Well, re-lay rail had declined, the use of re-lay rail was declining.

Q. (By the Court) What do you mean by re-lay rail?

A. That is where that is taken up on one end of the railroad and put on some other part of it where the traffic is lighter.

Q. I supposed that was so, but I wanted to be sure.

A. Yes, sir.

Q. (By Mr. Biggs) Now, we come down to the next item, that is cross ties. How many did you lay in 1930?

A. 1930, 386,364.

Q. How many did you lay in 1931? A. 225,583.

Q. Is that not less ties than at any time during the whole period that we are talking about?

A. Well, we increased the creosoted ties from—

Q. Just a minute, answer the question, Mr. Kirkpatrick. Isn't that fewer ties than any year you were familiar with?

The Court: Answer the question, Mr. Kirkpatrick, then, if you want to make an explanation, you may do so.

A. Yes, that is fewer ties.

Q. (By Mr. Biggs) Now, if you have an explanation, all right. I just want to keep the record straight.

A. That is what we put in the creosoted ties for, so that we could stop tie renewal. Now, we didn't put in but 268,000 in 1942.

Q. (By the Court) How much in 1942?

A. 268,000. It shows you the value of creosoted ties, and why we spent this money.

Q. You don't have to explain that to me. I eat lunch every Wednesday with Dr. Herman Von Shrank.

A. I know him. He creosotes our ties, looks after them, a very good man.

The Court: I am not setting myself up as an authority on ties, but I have heard a lot about them.

A. He is the best authority I know of.

The Court: That is what I thought.

Q. (By Mr. Biggs) Now, in 1930, you had 85,000 cubic yards of maintenance, patch ballast? A. Yes, sir.

Q. And in 1931, you only had 60,000? A. Yes, sir.

Q. A difference of 25,000 cubic yards? A. That is right.

Q. And in regard to bridge renewal, in 1930, you had 5500 feet, and in 1931, you had 3,176 feet?

A. That is right, and by the same token,—

Q. Just a second, Mr. Kirkpatrick. And that 3,176 feet is less than any other year from 1920, through 1931?

A. Yes, sir, and it is in the same category as ties. Now, by the same token, in 1942, we just renewed 897 feet, showing the value of creosoting material in reducing the cost of operation, and maintaining a railroad.

Q. Now, in 1930, you had 1,907 maintenance of way employees? A. Yes, sir.

Q. And in 1931, you had 1,332, is that correct?

A. Yes, sir, that is right. 1942, we had 1,167.

Q. And in 1930, you spent $3,269,999. on maintenance of way, and in 1931, you spent only $2,150,000, is that correct? A. That is correct.

Mr. Biggs: That is all the examination at this time. I may wish to call Mr. Kirkpatrick later.

Redirect Examination

By Mr. McConaughy:

Q. Mr. Kirkpatrick, is roadway maintenance affected in any way by the amount of traffic? A. Yes, sir.

Q. How? Explain how, just briefly?

A. Less use of track reduces the cost of labor, the amount of labor and the wear on the rail, and all other items that are affected by use.

Q. Your maintenance programs are geared to traffic requirements? A. Yes, sir.

Mr. McConaughy: That is all.

Mr. Biggs: That is all.

Re-Cross Examination,
By Mr. Biggs:

Q. They are geared to other requirements, too, aren't they, Mr. Kirkpatrick? A. I didn't understand.

Q. You just testified that the maintenance program was geared to traffic requirements. They are geared to other requirements besides traffic, isn't that true?

A. I don't know of any.

Q. The financial condition of the company has a lot to do with how much you spend on maintenance, doesn't it?

A. Yes, sir; traffic would have a lot to do with that.

Q. And the dividend requirements and a lot of other requirements enter into the picture?

A. I don't know anything about that.

Mr. McConaughy: I object to that, your Honor.

The Court: Wait; counsel is objecting.

Mr. McConaughy: I object to that. Mr. Kirkpatrick has not been qualified to talk about dividend requirements.

The Court: Objection sustained.

Mr. Biggs: But there are other requirements outside of traffic that are taken into consideration in determining—

The Court: He answered that already, hasn't he?

Mr. Biggs: I believe the answer is in the record. I just want to be certain it was clear.

The Court: All right.

Mr. Biggs: Q. There are other requirements besides traffic that determine how much you expend on maintenance, isn't that correct, Mr. Kirkpatrick?

A. I can't think of any; I don't know of any.

Q. You are stating that the only reason why you spent on maintenance is traffic, and it is dependent solely on traffic to determine how much you spend on maintenance; is that your testimony.

The Court: This man is an engineer, isn't he?

Mr. Biggs: That is right.

The Court: He don't know about that.

Mr. Biggs: He testified, if your Honor please, the only reason I asked him about it was he testified that traffic was the sole basis of determining how much was spent on maintenance. That is the basis for determining how much maintenance you ought to have, that may be perfectly true, Mr. Kirkpatrick; I am not arguing that.

The Court: It seems to me you are wasting time taking that up with an engineer. Why don't you get a financial man on here and ask him about that?

Mr. Biggs: The only reason I am asking him—

The Court: He testified because you asked him.

Mr. Biggs: No, he testified on direct examination of Mr. McConaughy, not because I asked him.

The Court: I am confused about it, then.

Mr. Biggs: He testified, so the record is clear, he testified that traffic was the sole basis of determining how much was spent on maintenance.

The Court: The Court is mistaken. Go ahead.

A. If you didn't have any traffic you wouldn't need any maintenance and you wouldn't have any money, so it is a vicious circle, it looks to me like. If you have a lot of traffic you need a lot of maintenance.

Q. (By Mr. Biggs) But how much you actually spend on maintenance is determined by other factors and other considerations besides traffic, is that not true?

A. I wouldn't say that. In the first place, railroad track is kind of a bank where you put a lot of money, you put a lot of good ties, a lot of ballast in it, and you can level down the rough spots with it. That is the reason you use creosoted ties, [planty] of ballast, and good ballast, and good bridges. It is kind of a place you put money. You don't get it out tomorrow, but you get it out in the next few years; maybe twenty years.

Q. I understand that; I am not quarreling with that testimony, Mr. Kirkpatrick. A. Yes, sir.

Q. What I am quarreling with is, I want the record

clear, is this, and I think that you didn't intend to make this impression in the record, that the sole consideration for spending money for maintenance was traffic?

A. Well, I would say in our case the sole consideration for spending money was the amount of use and business that we are doing. It is yet, and always has been and always will be.

Q. And isn't the primary consideration the amount of money on hand?

A. I don't know anything about that. I am trying to keep the railroad up.

Q. All right. Thank you.

Mr. McConaughy: I would like to call Mr. J. A. Brown.

J. A. Brown,

of lawful age, being first duly sworn, to tell the truth, the whole truth and nothing but the truth, testified on behalf of the Institutional Group as follows:

Direct Examination,
By Mr. McConaughy:

Mr. McConaughy: Your Honor, I have here a copy of I. C. C. Exhibit 1. It is made from the same tracing as I. C. C. Exhibit 1. I would like to show it to your Honor. It will be pertinent to this testimony.

Q. Please state your name, Mr. Brown.

A. J. A. Brown; reside at Houston, Texas.

Q. Will you please state your railroad experience?

A. I entered the service of the I. G. N. as a stenographer in the Traffic Department in 1897; worked in the rate department after about three or four years. In 1903, I was sent on the outside as commercial agent of the I. G. N. at Dallas. In 1907 I left the I. G. N. to go with the Gulf Coast Lines as Chief Clerk in the General Freight Office of the Gulf Coast Lines at Beaumont, Texas. I was with the Gulf Coast Lines until 1910. About fifteen months or a little more I was with the Trinity & Brazos Valley,

which was then a separate subsidiary of the Frisco Gulf Coast Lines, coming back to the Gulf Coast Lines as General Freight Agent in 1912, and thereafter, with the exception of Federal Control I was General Freight Agent and Freight Traffic Manager of the Gulf Coast Lines until after the Missouri Pacific took over the Gulf Coast Lines in 1924, December, 1924. Thereafter, on January 1st, 1927, I was made Assistant Vice-President of Traffic at St. Louis, and I held that position until Mr. Perkins retired as Vice-President of Traffic. After the road went into trusteeship I was, of course, Assistant Chief Traffic Officer. In 1941 Mr. Perkins retired as Vice-President and Chief Traffic Officer, and I was selected in his place, held that position until last June, and I retired under the Pension System of the Missouri Pacific. During Federal Control I was General Freight Agent of a group of railroads, and moved to Fort Worth only about five months until I was returned to Houston with the Gulf Coast Lines.

Q. You are thoroughly familiar with traffic conditions on the Gulf Coast Lines? A. Yes, sir.

Q. What are the duties of the Chief Traffic Officer?

A. He has the supervision of the freight and passenger traffic, rates and solicitations. In the case of Chief Traffic Officer of the Missouri Pacific, he has jurisdiction also of industrial development and agricultural development.

Q. Now, from time to time I am going to refer, Mr. Brown, to the Rio Grande Valley. Will you kindly tell us where that is located? I think that is sometimes called the Lower Rio Grande Valley?

A. The Lower Rio Grande Valley consists of about eight hundred thousand acres of land in Cameron and Hidalgo Counties, in Texas, with a little bit also in Willacy County, it is about twenty-five miles wide, perhaps, at its widest point, and about fifty to sixty miles long from Brownsville out to Mission, and a little beyond Mission now. The Valley is irrigated and cultivated and produces revenue freight.

Q. That is down at the southernmost tip of Texas?

A. Southernmost tip of Texas, which is just about the same parallel of latitude as—

Q. Key West? A. Key West, I think.

Q. And it has a very mild climate, isn't that true?

A. Yes, sir.

Q. What are the chief products of the Rio Grande Valley?

A. The chief products of the Rio Grande Valley are winter vegetables and citrus fruit. A lot of nice cotton is produced down there, also, but that is between seasons.

Q. Are the climate and soil down there well suited to the growing of winter vegetables? A. Yes, sir.

Q. The Brownsville; St. Louis, Brownsville & Mexico Railroad Company, which I will refer to as the Brownsville, when was that line completed into the Valley?

A. The line was completed between Algoa, Texas, which is about twenty-two or twenty-three miles south of Houston, and the Rio Grande Valley, in 1909. They started to build that railroad, I think they started at Robstown about 1904.

Q. You say it reached down into the Valley, the construction was completed into the Valley when?

A. Well, it was completed in 1909, at the same time the line was completed between the Mississippi River at Baton Rouge and Houston.

Q. Now, when was the first movement of—well, what was the first product, what were the first products moved out of the Valley?

A. The first products moved out of the Valley consisted of onions and cabbage and a very small volume of mixed vegetables. There was no railroad in the Valley and they could move nothing out except by wagon haul in those days.

Q. How far was that from the nearest railroad?

A. Well, it is one hundred and forty miles to Robstown from Brownsville, and it is perhaps a little shorter from some parts of the Valley.

Q. Now, did the citrus amount to anything back in those years at all? A. No, sir.

Q. Had any trees been planted at all at that time, citrus trees?

A. Only, I think, in the early stages. A very inferior quality of orange had been planted. The first record we have of any movement at all was in 1907, when we moved,

the season of 1907-08, when we moved 761 cars, of which 166 were cabbage and 372 were onions and 86 were mixed vegetables.

Q. Mr. Brown, have you prepared a table from the books and records of the Gulf Coast Lines showing the citrus and vegetable loadings for the period 1921 to 1924. A. Yes, sir.

Q. Is that the exhibit? A. Yes, sir.

Mr. McConaughy: I offer that in evidence.

Mr. Biggs: Same objection as I made before.

The Court: Overruled.

(Said paper was [thereuon] marked by the reporter as Group's Exhibit 19, for identification.) [See Vol. of Exs. p. 263.]

Q. (By Mr. McConaughy) Mr. Brown, what are the principal destinations of the perishables that move out of the Valley?

A. The principal destinations, the principal destination of the vegetables, as well as the fruit, is the Eastern territory north of the Ohio River and East of the Mississippi River, and by principal I mean perhaps sixty-five or seventy per cent of it moves there. It moves everywhere, Texas and other places.

Q. And isn't there a considerable movement to Kansas City, also, for the Missouri River area?

A. Yes, sir, there is considerable movement there.

Q. That movement to Kansas City began about what year?

A. The movement to Kansas City was—it first became a factor and something that we had to reckon with along between 1925 and 1930.

Q. Now, then, going back to the period prior to 1925, I would like to have you tell us the experience which the Gulf Coast Lines had in dealing with other railroad systems in the moving of this Valley traffic out of the Valley. Firstly, will you describe the nature of that traffic, I mean as freight, what kind of freight is it?

A. Well, it is perishable freight, it is vegetables and citrus fruits.

Q. And how about the rates collected for that kind of freight? A. The rates selected?

Q. Collected, the rates charged for that freight?

A. Well, the rates charged for that—

Q. I don't care for what the rate is, but relatively, is it high or low?

A. Well, it is relatively high per hundred pound, but per car it is not so high, because of the low loading, the light loading.

Q. Will you please describe the experience which the Gulf Coast Lines had in the period prior to 1925, in dealing with other railroad systems in moving that traffic up to St. Louis and beyond?

A. This railroad was built by the Frisco, that is—

Q. The Gulf Coast Lines?

A. That is the way I will refer to it. It was built by Mr. Yoakum as the pioneer of that territory, who at that time was at the head of the Frisco System.

Q. When you said this railroad you meant the Gulf Coast Lines? A. The Gulf Coast Lines.

Q. Go ahead.

A. Naturally, the business, the railroad was built with the idea of feeding the freight that would be originated to the Frisco System. The Frisco had a line as far as Fort Worth and Dallas, Texas. The Frisco was also affiliated in those days with the Rock Island; the Frisco was either supposed to own the Rock Island or the Rock Island own the Frisco, and the Rock Island built a railroad to come down and connect with the Gulf Coast Line at Eunice, Louisiana. Mr. Yoakum or his associates built a railroad originally known as the Trinity & Brazos Valley now known as the Burlington-Rock Island, from Dallas to Houston to connect with these systems so as to form a well rounded railroad system that would have an outlet from the valley through Houston, and another outlet through Eunice, Louisiana.

Q. Tell us about the experience that the Gulf Coast Lines had with the Frisco in moving that traffic.

A. Well, there was so little of it that no particular attention or no great attention was paid prior to, 1913, say; there was only 761 cars, as I stated a while ago, during the season of 1907-08, and I will state that when I say season on this perishable fruit or perishable freight I mean from about September 15th, I think the date we began, to about

the middle, first or middle of June of the next year. 1908-09 we had 990 cars. The next year it went up to 1,378 cars. 1910-11 it was 1,198 cars; in 1911-12 we had 1,738 cars, of which 1,218 were cabbage and 335 onions, 157 were mixed vegetables. During all that period I have mentioned, the business was, as far as we could control it, routed so as to reach the Frisco and give the Frisco the haul on it. The Frisco was furnishing the equipment.

Q. What do you mean by equipment?

A. Refrigerator cars.

Q. Perishable traffic had to move in refrigerator cars, is that it?

A. Yes, sir, it moves in refrigerator cars, and they had some cars, I don't recall what their ownership was, what the total was, but, of course, that is a small amount of business at best, and I don't suppose they had a lot of equipment, but the equipment was mechanically imperfect, and in 1912, a very bad winter, late winter and early spring season, a lot of rain, the St. L. B. & M. was pretty well down in the mud, with no ballast. They couldn't handle very heavy equipment over it, no motive power or equipment either, they were having a lot of derailments, a lot of trouble, and all of a sudden, owing to a scarcity of cabbage in the Northen market, the price of cabbage jumped up and everybody wanted to ship his cabbage at once. There were 1,218 cars of that cabbage which at that time was considered quite a lot of business, and we had almost an utter failure of supplying equipment, couldn't get the connections to handle the equipment down from North Texas to the Gulf Coast Lines, they didn't want to handle those cars because they wouldn't ride the track, jumped the track all the time, they scattered all over the right-of-way.

Q. Right there, what were those cars called, those refrigerator cars supplied by the Frisco?

A. They were Frisco refrigerator car line.

Q. What did you call them?

A. Someone very aptly named them, "White Hopes", they were known generally at that time as "White Hopes". Well, we just failed to furnish equipment, and these people in the Valley had grown cabbage and had pioneered this business, and they had been proud to have

a railroad come down there. They were pretty much up in the air and they became pretty angry and they hauled their cabbage to the railroad, dumped it on the right-of-way and said, "This is your cabbage, you have got to pay claims on this, pay us for it, you may load it or what-not". That was the first car shortage experienced by the Gulf Coast Lines.

Q. Now, how long did that relationship with the Frisco last?

A. The following year, in June, 1913, the Frisco went into receivership, as did the St. L. B. & M., the N. O. T. & M., the Gulf Coast Lines, and the relationship between the Frisco and the Gulf Coast Lines officially, I take it, was severed. They had separate receivers, a receiver for the St. L. B. & M. at Houston, and a receiver for the Louisiana Line, the N. O. T. & M., at New Orleans; we, however, continued to favor the Frisco to the extent that we had, and we didn't know what was going to become of the railroad when it came out of receivership, and worked along with it until 1916.

Q. 1916?

A. That is when we had the reorganization.

Q. Well, then, was it in 1916 you undertook new relationships with another railroad?

A. Earlier than that, as a matter of fact. During the summer of 1913, fall of 1913, we negotiated with the Santa Fe to handle our perishable business out of the valley. The Santa Fe had a branch line extending, crossing the St. L. B. & M. at Bay City. We wanted to handle the business all the way to Houston, get the long haul for the St. L. B. & M.

Q. Wait a minute, Mr. Brown. Where did that branch line of the Santa Fe connect with the Brownsville Line?

A. At Bay City, which is eighty-eight miles west of Houston.

Q. Bay City is not on this I. C. Exhibit 1. What town shown on that map is close to Bay City?

A. Well, I think Buckeye would be. I think it would be Buckeye. It is bigger in name than anything else. I think it is a signboard down there, but I think it would be between Buckeye and Angleton.

Q. And you are talking about Texas?

A. Yes, sir. The Santa Fe had their main line ran down to Galveston through Algoa and had a main line through Houston, and we wanted to handle it to Houston, but they were unwilling to work with us through Houston, they wanted that business to build up their branch line, and we had to, being in the nature of beggars at that time, we had to take the best we could get, so we could deal with them and handle the business through Bay City.

Q. All right. A. Which they did for three [aseasons.]

Q. Right there, what was the effect on Gulf Coast Line's revenues of your making deliveries at Bay City instead of up at Houston or some point further along?

A. The division up to Bay City was ten per cent less than the division would have been to Houston, which would have been a considerable amount of money.

Q. Now, I believe you stated where you made your deliveries to the Frisco. Was that in Houston?

A. No, we had to deliver them to a connection, we delivered them to the Trinity & Brazos Valley at Houston.

Q. That is what I mean, they went off your line?

A. Yes, sir.

Q. At Houston? A. Yes, sir.

Q. Now, after the Santa Fe what was next?

A. In 1916 the Gulf Coast Lines were re-organized; in the Spring of 1916, as an independent railroad, and during that summer we made arrangements with the M. K. & T., which had a main line and which runs right through Houston, and we handled them that one year over the M. K. & T.

Q. Now, just a second. Your deliveries to the M. K. & T. were at Houston? A. Yes, sir.

Q. All right, go ahead.

A. That continued only one year, it was reasonably satisfactory from many standpoints, but the M. K. & T. had no equipment, I mean no refrigerator equipment, and we hoped to handle the business through, the long haul over the N. O. T. & M. We built a railroad east of Houston to handle business there and it was in such shape that we were unable to handle this perishable freight over it for a long time, and we were unable to make satisfactory arrangements for quite a while, but in 1916 or 1917, that is the season 1916-17, we handled it over the M. K. & T. The

year 1917-18, of course, was Federal control, the major part of that season was Federal control, beginning January 1st, 1918, and in 1918-19 the Federal Government controlled the railroads. The Administrator, the Director General through his organization arranged to handle this business over the Missouri Pacific, using the I. G. N. from Houston, still, of course, short-hauling the system lines of the Gulf Coast Lines, and during the year, the season of 1918-19-20, I mean 1918-19 and 1919-20 they were handled that way without any particular contract or arrangement having been worked out. Federal control ended with February or, I believe, March 1st, 1920. When we came out of Federal control we were confronted by another big movement of business, the largest we had ever had. We had 6,307 cars that year, and 4,692 of them was cabbage, and again the price of cabbage jumped up sky high and everybody wanted to move the cabbage at once, and on March 1st, when we came out of Federal control we had no definite arrangement with anybody, sort of an understanding it was maybe going to move over the Missouri Pacific, and the people who were placed in charge of the Missouri Pacific, I mean of the Gulf Coast Lines, made a very hasty arrangement with the Missouri Pacific and the A. R. T. and made a contract which they made retroactive to September, 1918, to handle the business over the Missouri Pacific through the I. G. N. again, still short-hauling the System line. They moved that season that way, but we had another great shortage and a lot of claims and a lot of complaint and trouble. 1920-21 is the next season. Starting September, 1920 we moved the business over the Missouri Pacific again, but the following summer, 1921, we consummated an arrangement which we had been endeavoring to make for many years or for a number of years with the Illinois Central. We got them to agree that they would handle, they would furnish the equipment and handle the business and we were to deliver it to them at Baton Rouge, which gave us the haul for the full length of our railroad from the Valley, approximately six hundred and fifty miles, to the end of the actual railroad at Baton Rouge to the connections with the Illinois Central.

Q. All right. Now, two points I would like to make: you

said "we" here several times in your testimony. You were speaking of the Gulf Coast Lines, that is what you meant by we? A. Yes, sir. Well, "we" handled the business.

The Court: He used "we" in the same sense that Col. Lindbergh did.

Mr. McConaughy: That is right.

A. "We" again, the Gulf Coast Lines, handled the business during the seasons of 1921-22, 1922-23, 1923-24, via Baton Rouge and the Illinois Central. (this statement we have here shows, this exhibit that was put in) shows the number of cars that we handled there.

Mr. Biggs: Which exhibit is that?

Mr. McConaughy: I haven't offered that one yet.

The Witness: Exhibit 19.

Q. (By Mr. McConaughy) You were talking about Exhibit 19?

A. Yes, sir. I say, that shows the number of cars.

Q. Oh, yes, I see.

A. Of vegetables and citrus that moved during those seasons. I had mentioned it in connection with the movements up to then.

Q. Now, then, that takes you up to about the time of the acquisition of control by the Missouri Pacific?

A. Yes, sir, which was, I believe, in December, 1924.

Q. Now, Mr. Brown, I would like to stop right there and have you describe what the requirements for the handling of this perishable traffic are and were at the time. As I understand you to say, you had to have an [adequare] supply of refrigerator cars? A. Yes, sir.

Q. And that was a seasonal demand, it came in those months, September to March, I think you stated?

A. Yes, sir.

Q. Now, what about train schedules? I am not asking you what they were at any particular time, we will come to that a little later, but what was important from the standpoint of train schedules in the movement of this perishable traffic?

A. It was important to supply fast schedules.

Q. Fast service? A. Fast service.

Q. And to supply fast service, what kind of a roadbed did you have to have?

A. Well, we had to have—we had service at that time—

Q. I am not asking you to describe it, I am asking you to specify the necessity for the service.

A. Well, you had to have a good roadbed.

Q. Right. Now, toward the end of 1924, what were your train schedules from the Valley via Baton Rouge?

A. The schedule was 102 hours into St. Louis.

Q. Now, you stated that in moving these perishables over to Baton Rouge, into St. Louis, you used the Illinois Central. I would like to have you describe that operation, what was involved there, going via Baton Rouge.

A. We handled the business to a point called Anchorage, on the west bank of the Mississippi River opposite Baton Rouge, where we had this car ferry, still have for that matter, and we had to handle it across on that car ferry, deliver it to the Illinois Central in trains on the other side of the River, and they handled it north through Cairo to this territory.

Q. How many times did the ferry have to cross to get the train over to Baton Rouge? It would, of course, depend on the length of the train, but generally.

A. I think they had to make three—

Mr. Biggs: (Interrupting) Your Honor please, just a minute. This witness is not competent along these lines. He is a traffic man. Mr. Kirkpatrick might have been competent.

Mr. McConaughy: I don't know why a traffic man does not, could not know about that.

The Court: Read the question.

(The question was repeated by the reporter.)

The Court: It is a traffic man's job to know, as a matter of fact, about traffic.

Mr. Biggs: I don't see that it is relevant, either. I object also on the ground of relevancy. I don't see where it is relevant to the issue.

The Court: Overruled.

A. Those ferries handle—shall I answer? Those ferries handled 20 cars, and of course had to make three round trips.

Q. Three round trips to take the train across?

A. Fifty minutes to cross and fifty minutes back, of course, would be almost—less than six hours to get the train across.

Q. The ferry crossing was—

A. (Interrupting) One trip.

Q. Was an important factor in this 102 hours from the Valley to St. Louis? A. Yes, sir.

Q. Via Baton Rouge. Now then, after the Missouri Pacific's acquisition of the Gulf Coast Lines' control, what happened, as far as the handling of that perishable traffic is concerned?

A. As a matter of fact, it was known that the Missouri Pacific was—at least we thought we knew that the Missouri Pacific was going to handle this business, was going to own the Gulf Coast Lines, and in September or October, when the new season started, we started to use our influence to route this business through Kinder and the Missouri Pacific, via the Kinder-Alexandria route to St. Louis.

Q. Will you state the States in which Kinder and Alexandria are?

A. Kinder, Louisiana, which is a hundred miles west of the Mississippi River.

Q. That was the point at which the Gulf Coast Lines delivered the perishable traffic to the Missouri Pacific?

A. Yes, sir.

Q. Now, that was a shorter haul for the Gulf Coast Lines than Baton Rouge, but considerably farther than Houston, is that right?

A. Yes, sir. It is a hundred and seventy-eight miles, I think, from Houston, I think, from Houston to Kinder.

Q. Now, was it during the period after 1924 that the perishable traffic to Kansas City became important? I think you stated that it was. A. Yes, sir.

Q. Will you tell us a little bit about the establishment of schedules out of the Valley to Kansas City? When did you first attempt to handle that traffic to Kansas City?

A. Well, the traffic, of course, as it grew, and as you have observed from this Exhibit No. 19, was getting to be materially greater than it had been prior to the World War One, and somewhere in the neighborhood of fifteen or twenty per cent of the business would go to that territory, and as the business increased, fifteen or twenty per cent would be a greater—would amount to considerable business. With the Southern Pacific building into the Valley in 1927 and having a much more direct route to Kansas City than the Missouri Pacific—and the Gulf Coast Lines, plus the I. & G. N. and Missouri Pacific, either through Kinder or through Houston, it became quite a problem as to what to do with this business going to the Missouri River or going to the Missouri River and beyond, and by that, I mean Kansas, Colorado, Minnesota, and Iowa, so that we were confronted with the problem of what to do about it. If we did not provide a schedule that would meet the competition with a competitive route of the Southern Pacific, a shipper who was located on our line and did all of his shipping over our line would be inclined to move over to the Southern Pacific and ship all of his business over the Southern Pacific.

Q. What did you do about it?

A. It was one of those situations that was forced on us, it was necessary to meet it or—

Q. (Interrupting) Lose the business?

A. Or admit that we were not a going concern to that territory, and we had to meet it.

Q. And did you meet it?

A. And we did meet it, yes, sir.

Q. You met that competition? A. Through Houston.

Q. Through Houston up to Kansas City?

A. Up to Kansas City, and that business has since moved on a very fast schedule over the I. & G. N., T. & P. to Texarkana, and Missouri Pacific.

Q. Where was it delivered to the I. & G. N.?

A. At Houston.

Q. At Houston. Now I would like to go back and discuss this change which occurred at the time the Missouri Pacific got control of the Gulf Coast Lines, and have you tell us about the divisions between, comparing the divi-

sions at Baton Rouge and at Kinder; in other words, tell us what proportion of the through rate the Gulf Coast Lines got when the traffic went via Baton Rouge, and then via Kinder? A. Well, when the—

Q. (Interrupting) Begin with the divisions at Baton Rouge.

A. Well, the divisions via Baton Rouge were, of course, the best that the Gulf Coast Lines had ever had to handle this business. Mr. Baldwin, who was president of the Missouri Pacific—

Q. (Interrupting) Wait a minute. Before you start on describing the Kinder route, I would like to know roughly what proportion of the rate was given to the Gulf Coast Lines for the hauling of that perishable business to Baton Rouge.

A. The Gulf Coast Lines earned up to Baton Rouge on the citrus freight—citrus fruit—approximately 74% of the proportion up to Cairo, Illinois.

Q. All right. Now then—

A. (Interrupting) That is on the citrus.

Q. On the citrus?

A. On the vegetables, they earned figures that ranged from 72.8% to 74.8%. Those divisions were made in a rather complicated manner.

Q. I don't care to know the details, don't want that.

A. Figured out with section percentage.

Q. Now then, when the business started moving through Kinder, after the Missouri Pacific acquired control, tell us about the making up of those rates and what was finally done.

A. Making up of those divisions?

Q. Divisions I mean, yes, sir. A. Well, Mr. Baldwin—

Q. (Interrupting) First, did you have any connection with the making up? A. Yes, sir.

Q. Of those divisions through Kinder? A. I did.

Q. Did you have a talk with Mr. Baldwin about making up the divisions? A. I did.

Q. Did he give you any instructions about it?

A. Yes, sir.

Q. And what were they?

A. His instructions to me, as representing at that time—

I was on the Gulf Coast Lines, Mr. Perkins was on the Missouri Pacific, and he said to us, he wanted us to agree on divisions that would be fair, and that he did not want to do anything that would in any way prejudice—let's see—that would in any way detract from the earnings of the Missouri Pacific, he wanted to be liberal with them.

Q. Do you mean Missouri Pacific there?

A. I mean Gulf Coast Lines.

Q. He said he wanted the arrangements to be made liberal in favor of the Gulf Coast Lines?

A. Yes, sir, and they were.

The Court: (Q.) Who told you that?

The Witness: Sir?

The Court: (Q.) Who told you that?

The Witness: Mr. Baldwin.

The Court: (Q.) When was it he told you that?

The Witness: 1924, in the fall, just at the time he bought the Gulf Coast Lines.

Q. Now, you and Mr. Perkins worked out those divisions via Kinder? A. Yes, sir.

Q. And what result did you achieve as the result of that?

A. We approached it in this way: We figured to try to make the divisions to result in about ten dollars a car less money to Kinder than to Baton Rouge, figuring this way: That it was a hundred miles—that there was a car rental charge, car rental loaded and empty of two cents a mile, it would be four dollars a car. That there was a crossing charge, which at that time averaged $3.50 each way, which made $7. a car.

Q. You are [taling] about the River crossing?

A. River crossing at Baton Rouge. That made $11. and we thought that if we said that the line haul perhaps was $4. for that hundred miles, that that would be a very liberal arrangement to the Gulf Coast Lines, and it so proved to be. We figured that that would mean it cost to have handled it from Kinder to the Illinois Central about $15 a car, and that if we made the division via Kinder

about $10 a car less than to Baton Rouge, it would give the Gulf Coast Lines about a five dollar advantage. Roughly, that is what we undertook to do, and we accomplished that.

Q. That was on the vegetables?

A. Yes, that was on the vegetables. That actually figured out—I would like to say here that we did not have to do much figuring about citrus; there wasn't any to amount to anything at that time.

Q. That is right, at that time. Well, now, the divisions that you put in effect you say resulted in a saving to the Gulf Coast Lines, the new divisions, of $5—is that right? In other words, it was $5 more profitable to Gulf Coast Lines to deliver that to the Missouri Pacific at Kinder than it was to deliver it to the Illinois Central? A. Yes.

Q. At Baton Rouge under the rate, or basis that you described before that?

A. Yes, sir. That is what we undertook to do.

Q. All right. Anything more about making up those divisions? Is that the story?

A. Well, subsequent events proved that we were more than liberal to the Gulf Coast Lines.

Q. Well, now, do you recall a decision of the Interstate Commerce Commission known as the Southwestern Rate decision handed down in 1936? A. 1928.

Q. No, 1936. A. On rates?

Q. The decision was handed down in 1936, wasn't it?

A. Well, in 1928, I think you—

Q. (Interrupting) Did I say rates? I meant to say divisions again. A. Yes, sir.

Q. A decision of the Interstate Commerce Commission in 1936 affecting divisions? A. That is right.

Q. You recall such? A. Very definitely, yes, sir.

Q. What was the effect of that decision on the divisions via Baton Rouge, as compared with Kinder?

A. Using the year 1936, some actual figures were made, and under that order the saving to the Gulf Coast Lines on the citrus, Kinder as against Baton Rouge, amounted to $17.63 a car, to which should be added the $15 I mentioned as the cost of operating that additional mileage, or a saving to the Gulf Coast Lines via Kinder as against

Baton Rouge of $32.63 a car on citrus. On the vegetables, it amounted to $12.82, again plus the $15 mentioned, made $27.82 a car on the vegetables.

Q. Now, have you prepared an exhibit showing the proportion of total perishable business moving through Kinder for the Gulf Coast Lines? A. Yes, sir. Oh, yes.

Q. That is your exhibit, is it? A. Yes.

Q. What is the source of the information shown on it?

A. That is our records, our interchange, records.

Q. Gulf Coast Lines' records? A. Yes, sir.

Mr. McConaughy: I offer that in evidence.

(The said document was marked by the reporter as Group Exhibit No. 20.) [See Vol. of Exs. p. 264.]

Q. Now, have you also prepared an exhibit comparing the interchange at Kinder and Baton Rouge? A. Yes, sir.

Q. Freight traffic? A. Yes, sir.

Q. That is your exhibit? A. Yes, sir.

Q. And what is the source of the information shown thereon? A. That is our records, also.

Q. Gulf Coast Lines'? A. Yes, sir.

Q. And Missouri Pacific, or just Gulf Coast Lines?

A. Well, both.

Mr. McConaughy: Both. I offer that in evidence.

Mr. Biggs: Same objection that I made to other exhibits of the same kind and character. Let the record show the same objection to Exhibit No. 20.

Mr. McConaughy: That is marked Group Exhibit No. 21.

(The said document was marked by the reporter as Group Exhibit No. 21.) [See Vol. of Exs. p. 265.]

Q. Now, going back to that decision to which I referred of the Interstate Commerce Commission, what effect did that decision have on the divisions as between the Gulf Coast Lines and lines beyond?

A. It had no effect on the divisions between—on the percentage divisions between the Gulf Coast Lines and the Missouri Pacific or its direct connections, except where they went through the Mississippi River.

Q. But didn't it have an effect on the amount of money the Gulf Coast Lines would get out of the total freight?

A. Yes, sir.

Q. Well, now, will you just describe that a little bit more in detail? I did not quite—I don't believe I quite understood it.

A. Well, I think perhaps you—would you like me to say—

Q. What was the effect of that?

A. Like me to go back a little. The Interstate Commerce Commission in the Southwestern Rate case, effective in June, 1928, fixed the rates that were applicable on this traffic between the East and the Southwest, fixing the rates, but said nothing about the divisions, and the Southwestern Lines immediately got into a controversy, or we had a controversy about what the divisions would be—that was in 1928, but we undertook, over a period of years, in fact until 1931 the Eastern Lines were taking the division, taking the settlements on all this traffic, some of them one way and some of them another, and via different junctions, and different ways, claiming they had no divisions, and that the divisions had been unfair to them, so that in 1931 the Southwestern Lines filed a complaint with the Interstate Commerce Commission, asking them to fix divisions. It took from 1931 until effective September 22, 1936 the Commission issued an order. The effect of that order was to materially reduce the divisions that were applicable via Baton Rouge.

Q. Right. A. And of course it reduced—

Q. (Interrupting) And as compared with Kinder, the situation which you described before was considerably exaggerated? A. Yes, sir.

Q. Isnt that right? A. Yes, sir.

Q. In other words, Kinder became much more the favorable route, isnt that right? A. That is correct, yes, sir.

Q. Now, in establishing the fast train schedules, a part of the savings in time was effected on the Gulf Coast Lines itself, isn't that right? A. Yes, sir.

Q. And another and larger part was effected on the Missouri Pacific, is that right?

A. I don't know how much, how large a saving it was. There was a saving in time both north and west of Kinder on the Gulf Coast Lines.

Q. Now, for purposes of comparison, we start with 102 hours from the Valley to St. Louis via Baton Rouge. Now, was there a change in schedules for these perishable trains on January 1, 1925? A. Yes, sir. Made 97 hours.

Q. And was there another change—now, wait a minute—97 hours, that was via—

A. (Interrupting) Via Kinder.

Q. Via Kinder. And on October 1, 1927, there was another change? A. Yes, sir. 72 hours.

Q. And there was another one on October 30, 1929?

A. 64 hours and thirty minutes.

Q. These are all between the Valley and St. Louis?

A. Yes, sir.

Q. Via Kinder? A. That is correct.

Q. Except the first one which I mentioned. Now, another one October 22, 1932?

A. That is correct. 61 hours and 30 minutes.

Q. In other words, that schedule had been shortened from 102 hours in 1924 to 61 hours and 30 minutes by October, 1932? A. Yes, sir, beginning with the 1932 season.

Q. Subsequent to that time, the schedule has been shortened even more? A. No.

Q. It has not been?

A. No. That schedule has remained the same ever since, except that at present they have a war time schedule a little bit longer.

Q. Now, did the Missouri Pacific maintain an agricultural expert down in the Valley? A. Yes, sir.

Q. And what were his duties, what did he do? I don't want to get them all, but what were the chief things?

A. Well, his duties were to supervise the growings of various crops.

Q. Did he maintain an experimental farm or farms down there?

A. Yes, sir; he has two of them in operation at the present time. He had some all the way through, all along.

Q. And he undertakes to advise with the growers?

A. Yes, sir.

Q. Has the Missouri Pacific done anything to advertise the products of the Valley? A. Yes, sir.

Q. What?

A. Well, they have advertised it all over the various—

Mr. Biggs: (Interrupting) Just a minute, please.

Mr. McConaughy: All right. I think we already have the items.

Q. Was the agricultural agent maintained there during any part of the period, 1925 to 1932?

A. All of the period, yes, sir.

Q. All of that period. And my question now concerning advertising the products of the Valley is confined to that period, 1925 to 1932. What did the Missouri Pacific do during that period?

A. Well, it advertised it in various publications. We also—the Missouri Pacific also had exhibit cars of citrus fruits and vegetables sent out all over the Country, I think they used two cars, had two cars equipped with exhibits of the various products, and carloads of mixed fruits sent along there to catch up with them at various points, such as, for instance, at St. Louis, Chicago, or perhaps Cincinnati, or East, and to renew them, to keep them fresh, to show them to people all over the United States.

Q. Now then, you have mentioned the A. R. T. several times in your testimony. Will you please tell us what the A. R. T. is?

A. That is the American Refrigerator Transit Company, owned by the Missouri Pacific, with part ownership on the part of the Wabash.

Q. And what is the business of that corporation?

A. Supply refrigerator equipment, and spend a great deal of their time and efforts in building up the movement, and their contract with the Missouri Pacific goes a long way toward—they do all the tracing, or a great deal of the tracing, and they handle the diversions, they handle the diversions for Gulf Coast Lines, and they furnish the cars and see that they are cleaned and supplied, and adequate supply maintained.

Q. Now, did the A. R. T. enter into an arrangement with the Gulf Coast Lines for the supplying of refrigerator cars for this perishable traffic around some time in 1924 or 1925? A. Yes, sir.

Q. And has the A. R. T. furnished an adequate supply throughout the period, 1925 to 1932, of refrigerator cars to meet traffic needs of the Gulf Coast Lines? A. Yes, sir.

Q. Will you tell us briefly the financial arrangements that were made with the A. R. T.?

A. Oh! Under the contract that we made with the A. R. T., the Gulf Coast Lines was to—the refrigeration charge was to accrue to the Gulf Coast Lines. For instance, to illustrate, we will say it cost a hundred dollars to supply the refrigeration from the Rio Grande Valley to New York. That would be the charge that we would make to the shipper. That hundred dollars would be collected in New York by, we will say, the Pennsylvania Railroad, and that hundred dollars would be given to the Gulf Coast Lines, and they would to pay all of the re-icing charges and all of the charges, the incidental charges of getting that car refrigerated all the way to New York. We will say that it did not cost actually $100 but $75, and so that there was a profit.

Q. What has that meant in dollars and cents to the Gulf Coast Lines over the period?

A. That meant, over the period, 1924 to 1932, a profit of $6,171,876.

Q. From that one factor alone? A. Yes, sir.

Q. Now, Mr. Brown, do you feel, is it your opinion that the Gulf Coast Lines would have been in a position to handle this perishable traffic from the Valley in the way you have described, without the assistance of the Missouri Pacific?

A. They could not have done nearly as good a job with any other railroad as they have done.

Q. Now, have you prepared an exhibit showing carloadings of all Class I. railroads for the period, 1922 to 1931, and comparing those figures with carloadings received by the Gulf Coast Lines from various other roads?

A. Yes, sir.

Q. Is that the exhibit (indicating)?

A. That is it, yes, sir.

Q. Now, what is the source of the information shown on that exhibit?

A. These carloadings figures are from the A. A. R. reports.

Q. Now, what is the A. A. R.?

A. Association of American Railroads.

Q. That is the place a railroad man looks for that sort of information, is it? A. Yes, sir.

Q. Customarily? A. Yes, sir.

Q. All right.

A. The other figures are from our own records of interchange, that is, the Gulf Coast Lines' records of interchange with its connections.

Q. Now, what conclusion do you draw from that exhibit as to the effect of Missouri Pacific control?

A. I would say that it has been very advantageous to the Gulf Coast Lines.

Mr. McConaughy: I offer that exhibit in evidence.

Mr. Biggs: Same objection I made to the other.

The Court: Very well.

(The said document was marked by the reporter as Group Exhibit No. 22.)

Mr. McConaughy: That is marked Group Exhibit No. 22.

(The said document identified as Group Exhibit No. 22.) [See Vol. of Exs. p. 266.]

Q. Mr. Brown, would you say that the Gulf Coast Lines at all times during the period, 1925 through 1931, had an adequate supply of freight cars, passenger cars, and locomotive equipment to meet its traffic requirements?

A. With the assistance of the Missouri Pacific, it did, yes.

Q. Mr. Brown, you have mentioned that the Southern Pacific built down into the Valley in 1927? A. Yes, sir.

Q. How much of the perishable traffic, what proportion of the perishable traffic was divided between the Gulf Coast Lines and the Southern Pacific as the result of constructing that line down there, and following?

A. We have maintained a ratio of about 80-20. The Gulf Coast handled about eighty per cent, the Southern Pacific about twenty per cent.

Q. In other words, right from the start the Gulf Coast Lines has maintained its position of about eighty per cent of perishable traffic moving out of the Valley?

A. Yes, sir. That should be qualified to this extent—

Q. The freight traffic moving out of the Valley?
A. Of the trucks.
Q. I say, railroad.
A. Of the railroad, yes, that is correct.
Q. Mr. Brown, do you think, in your opinion could the Gulf Coast Lines have maintained that position of eighty per cent, if it had not had sponsorship by the Missouri Pacific? A. No, I don't think they could.

Mr. McConaughy: That is all, Your Honor.

Mr. Biggs: If Your Honor please, I believe it is customary to take a short adjournment. I should appreciate it.

The Court: Your motion, Mr. Biggs. Announce a brief recess.

(Brief recess.)

Mr. McConaughy: That is all I have, Mr. Brown.

Cross Examination,
By Mr. Biggs:

Q. Mr. Brown, did you personally prepare these exhibits, or were they prepared under your supervision?
A. They were prepared under my personal supervision, and I can almost say I personally prepared them.
Q. Now, you testified that there was a profit of about six million dollars as the result of the Gulf Coast Lines' receiving this hundred dollars charge for icing on freight cars. A. Yes, sir.
Q. Over what period of years did that cover?
A. That is for the calendar years, 1924 through 1932.
Q. Through 1932. And that is a profit accruing to the Gulf Coast Lines as a unit, I mean that takes in all of the various Gulf Coast Lines? A. Yes, sir.
Q. Where in the books of account can we find those figures, if we want to check into them?
A. I don't know that I can answer that. It is credited to operating revenues—operating expenses.
Q. Operating expenses. Wouldn't it be credited to operating revenue, rather than operating expense?

A. Let me say that I just don't know that.

Q. You don't know? A. I cannot answer that.

Q. Well, who gave you those figures?

A. I got the figures in Houston from the auditor.

Q. From the auditor. Now, will you look at Exhibit No. 21, please?

(The witness examines the said document.)

The Court: What is 21, Mr. Biggs?

Mr. Biggs: Exhibit No. 21, if Your Honor please, shows the carloads delivered and received from the Missouri Pacific and Gulf Coast Lines and other connections.

Q. Now, I first call your attention to these first two columns, carloads received by Gulf Coast Lines and carloads delivered by Gulf Coast Lines, up to 1928 they were approximately the same, that is, the amount received and the amount delivered at Kinder, Louisiana, isn't that correct, from 1922 to 1928? A. They were in 1928, yes, sir.

Q. Well, 1928, 1922, and 1921, well, there were some disparities before, but going, taking from 1928 on, in 1929 the Gulf Cost Lines received 23,412 cars from the Missouri Pacific at Kinder? A. Yes, sir.

Q. And delivered to the Missouri Pacific 27,916, is that correct? A. Yes, sir.

Q. And in 1930, they received from the Missouri Pacific at Kinder 23,441 and delivered 34,838? A. Yes, sir.

Q. And in 1931, they received 19,215 and delivered 30,450? A. Yes, sir.

Q. So for the last three years on that exhibit, there were substantially more cars delivered to the Missouri Pacific than were received from the Missouri Pacific at Kinder, is that correct? A. That is correct.

Q. Now, I believe you testified that in regard to what is called the Missouri River movement. A. Yes, sir.

Q. That is through Kansas City, that that was delivered to the I. & G. N. at Houston? A. Yes, sir.

Q. Then the Gulf Coast Lines have a connection with the Kansas City Southern at Alexandria or some place in that neighborhood?

A. It has a connection with them at Beaumont, yes.

Q. At Beaumont? A. Yes, sir.

The Court: (Q.) Beaumont, Texas?

A. Beaumont, Texas, yes, sir.

Q. Beaumont, Texas.

A. Also at De Quincy, Louisiana.

Q. At De Quincy, Louisiana. That is with the Kansas City Southern? A. Yes, sir.

Q. Can you tell me what would be the division of rate for a carload of, say, citrus, between—that was bound to Kansas City, if shipped via Gulf Coast Lines to De Quincy, and then to Kansas City over the Kansas City Southern, in contrast to the division in rate if shipped over the Gulf Coast Lines to Houston, and then via I. & G. N. and other connections to Kansas City?

A. No, I don't have those figures in my head. It is a very slight difference, though.

Q. Well, what is it?

A. The division up to Houston is so liberal to the Gulf Coast Lines that the Kansas City Southern is unwilling to offer a very attractive figure to get that haul on to De Quincy to be delivered to them there.

Q. There are about 156 more miles of haul over Gulf Coast Lines if it is delivered to the Kansas City Southern at De Quincy, isn't that correct?

A. There would be, yes, but if it had been delivered at all to the Kansas City Southern, they would demand it at Beaumont, which is 90 miles longer haul, but they offered a very, very slight increase in divisions over the divisions via Houston. We tested that out before the Missouri Pacific ever got control of the Gulf Coast Lines, because we were continually seeking to get the longest haul possible for the Gulf Coast Lines, and the greatest revenue, the longest haul commensurate with the revenue, provided it would have any greater revenue.

Q. Well, there is a great deal of horse trading in the divisions between railroads, isn't that true?

A. Considerable trading. Maybe it is horse trading. I don't know.

Q. Well, that is an Ozark expression. I don't know what your expression is down in Texas for the same thing.

I believe that is all at the present time, Your Honor. I may wish to recall the witness after I have had an opportunity to more carefully examine these exhibits.

Redirect Examination,

By Mr. McConaughy:

Q. I just have one question. The L. & G. N. was a subsidiary of the Gulf Coast Lines, is that right? A. Yes, sir.

Q. During the period.

Mr. Everett Paul Griffin: May I ask the witness a question or two, Your Honor?

The Court: Very well.

Cross Examination,

By Mr. Griffin:

Q. Mr. Brown, you stated that the Missouri Pacific, of which you were a traffic officer, had favored the N. O. T. & M. in the division of the rate, that you made them a very favorable rate, that you wanted to help them and make it profitable to them and give them a very favorable position, isn't that right? A. Very favorable division, yes.

Q. Yes. A. Division of the rate.

Q. Now, the L. & G. N. taps a territory somewhat similar to Gulf Coast Lines', doesn't it, the winter fruit produce near Laredo and that vicinity? A. Yes, sir.

Q. And the Missouri Pacific divided the rate with the L. & G. N., didn't it? A. Yes, sir.

Q. At the time you were traffic officer? A. Yes, sir.

Q. Now, did the Missouri Pacific give to the L. & G. N. the same favorable rate that they gave to the Gulf Coast Lines on the winter vegetables?

A. The Missouri Pacific—

Q. (Interrupting) Did they give as favorable a rate to the L. & G. N.?

A. Favorable a division, I suppose you mean.

Q. Yes, as they did to the Gulf Coast Lines.

A. From Laredo, are you speaking of?

Q. Yes, sir. A. From Laredo.

Q. To the connection with the Missouri Pacific?

A. I don't know what that division is, offhand. I cannot—

Q. (Interrupting) Well, would you say it is your impression that it was not as favorable a division?

A. Well, I would rather not say, because I don't know. I would have to look that up. I rather think it was a pretty favorable division; it was a long haul.

Q. But you do not think it was as favorable as that with the N. O. T. & M., do you?

A. No, I don't think that it was as much up to Longview as—from Laredo to Longview as it is from the Rio Grande Valley to Kinder.

Q. Now, even the grapefruit, that is, the citrus fruit and the winter vegetables from around the Brazos Valley, that was shipped partially over the International-Great Northern at one time, wasn't it?

A. From what is known as the winter garden of the South in Southwest Texas.

Q. Yes, sir.

A. That moves via Gardendale and the I.-G. N. and Missouri Pacific.

Q. And they took that away from the International—pardon me—do you want to make an objection (addressing Mr. McConaughy)?

Mr. McConaughy: I would like to object to this line of questioning, because I don't see that it has any bearing on the issues presented at this hearing.

The Court: I don't think so, either.

Mr. Griffin: Sir?

The Court: What have you got to say? I cannot see where it has any.

Mr. Griffin: I was developing the rates, and that is involved in these objections, Your Honor, that we have to the plan. The rate that was given to us. There have been contentions made that there was a deficit in the I. & G. N. during certain years, and I want to show that the I. G. N. received unfavorable treatment during certain years as against Gulf Coast Lines.

Mr. McConaughy: I think that statement makes it clearly irrelevant. We are not considering at this hearing whether the L. G. N. was favorably or unfavorably treated.

The Court: Objection sustained.

Mr. Griffin: I understood we were hearing everything relating to the plan and this claim against the N. O. T. & M. at this time. That is why I am asking these questions.

Mr. McConaughy: I have nothing further, Your Honor, with this witness.

The Court: Step down.

Mr. McConaughy: I would suggest, Your Honor, that this might be a proper time to have a recess for today. My next witness is Mr. Wyer, who will take quite a while.

The Court: How long?

Mr. McConaughy: Oh, I would guess probably tomorrow.

The Court: Announce an adjournment until tomorrow morning at ten o'clock.

At this point, 4:35 P. M., March 19, 1945, an adjournment was had until 10:00 A. M., March 20, 1945.

Met, pursuant to adjournment as above, on March 20, 1945, at ten o'clock A. M.

Appearances: Same as heretofore noted.

The Court: You may proceed with the Missouri Pacific case.

Mr. McConaughy: I should like to call Mr. William Wyer.

WILLIAM WYER,

a witness of lawful age, being duly produced, sworn and examined, testified on behalf of Group of Institutional Investors as follows:

Mr. McConaughy: Your Honor, here are the exhibits, which Mr. Wyer will refer to.

Q. Kindly state your name, Mr. Wyer.

A. William Wyer.

Q. And where do you reside?

A. East Orange, New Jersey.

Q. Will you kindly state your qualification, or qualifications, to give the testimony which you will give here?

A. I graduated from Yale and Massachusetts Institute of Technology, and also studied all of the railroad courses given by the Harvard Graduate School of Business Administration.

In the first World War I was First Lieutenant in the Engineer Corps, and was engaged principally upon the construction and the operation of a railroad owned by the War Department, serving Camp Humphreys, Virginia.

After the war I was in the United States Railroad Administration in Washington during the period of Federal Control, and after the close of that period in various positions in the Division of Operations, the Division of Accounts, and the Director General's Office. My last position with the Railroad Administration was Assistant to the Comptroller in charge of the maintenance account section, which had to do with the settlement between the Government and all of the railroads of the United States, their under or over-maintenance of their properties during the period of Federal Control.

I left the Railroad Administration in the fall of 1920 and went to the Southern Railroad Company at Norfolk, Virginia, as Assistant Superintendent of Transportation. I was there about a year and went to Denver, first as statistician on the staff of the president of the Denver, Rio Grande and Western Railroad. I was there about seven years and during the latter part of my residence in Denver I was assistant to the president in charge, principally of operating matters, although I had to do with all of the departments of the railroad.

In February, 1929, I went to New York as assistant to the Chairman of the Board of Directors of the Missouri Pacific.

I might say that during the last four years of my stay in Denver the Denver, Rio Grande and Western was fifty per cent. owned by the Missouri Pacific, so it was considered a part of the Missouri Pacific System.

In February, 1929, I went to New York as Assistant to the Chairman of the Board of Directors of the Missouri Pacific, who was also Chairman of the Board of the Gulf Coast Lines, all the various companies—International-Great Northern, Texas and Pacific, and other Missouri Pacific companies. Later in that year I was elected Secretary and Treasurer of the Missouri Pacific and an officer on, I think, all of the subsidiaries except the Texas and Pacific.

In 1930 the Alleghany Corporation secured control of the Missouri Pacific and Mr. Williams, who had been chairman, resigned and our offices were moved to Cleveland. I then continued as an officer of the Missouri Pacific companies, including the Texas and Pacific, for about six years.

While I was in Cleveland I handled, under the supervision of the chairman of the board, a great many of the financial matters involving the Missouri Pacific and the Gulf Coast Lines and other Missouri Pacific subsidiaries, and in 1933, after the Missouri Pacific went into bankruptcy, I started the studies which furnished the foundation of the Plan of Reorganization and had quite a part in drafting the Debtor's original plan of reorganization, and presented it to the Interstate Commerce Commission at the first hearings in the reorganization proceedings, and presented several hundred exhibits in support of that plan. Although there have been later plans, the basic studies made at that time provide substantially all of the studies upon which the various plans have been based.

I later participated in the negotiations leading up to the Debtor's Modified Plan, and still later was asked by some of the different parties in the reorganization proceedings to serve as a [negotiater] in connection with the plan that is now pending before this Court, so that, I have been pretty thoroughly in touch with the Missouri Pacific reorganization proceedings from the beginning.

In 1938, I think it was, I went into business for myself as a consultant on railroad matters, and shortly thereafter formed the firm of William Wyer and Company, which has been employed in a good many railroad reorganizations. I might mention the Wabash, Alton, Chicago &

Northwestern; of course, the Missouri Pacific, the Denver, Rio Grande & Western, the Erie, the New Haven, Seaboard Airline, Central of Georgia, Florida East Coast, and several other railroads.

In the course of our work the firm was also employed in the Central Railroad of New Jersey reorganization and after several years of work there I was appointed chief executive officer of the Central Railroad of New Jersey, which is now the job which takes most of my time. I am still, by arrangement with the Trustees, permitted to continue work in the several cases in which I had been involved and to devote a limited amount of my time to consulting work, but my main job today is running the Central Railroad of New Jersey.

Q. Mr. Wyer, in the course of your testimony you are going to submit testimony as to some exhibits; at the foot of each of those exhibits is stated the source of the information contained thereon: Is that statement as to the source, on each of the exhibits, true and correct? A. Yes.

Q. Mr. Wyer, will you kindly give us a statement concerning the properties and locations of each of the Gulf Coast Lines companies and explain the relative importance of each?

A. My first exhibit which bears upon this subject, which is a portion of Exhibit No. 1 in the proceedings before the Interstate Commerce Commission, is enlarged to make it easier to see the different companies involved.

Q. And is this the exhibit (indicating)? A. That is it.

Mr. McConaughy: I offer that in evidence.

(The exhibit last offered in evidence was marked Group Exhibit 23.) [See Vol. of Exs. p. 267.]

A. This is the southeastern portion of the Missouri Pacific System, showing all the Missouri Pacific lines in that territory and especially all of the Gulf Coast lines, and I wanted to put it in this form because I think it is important to an understanding of this entire Gulf Coast Lines situation to see where the different companies lie, and their relation to each other.

The parent company, the New Orleans, Texas & Mexico, extends from New Orleans on the east to the Louisiana-

Texas state line, and it is the company which is designated in the two solid parallel lines, which are broken in spots. It is designated by two parallel lines, which are part solid and part broken. It runs from New Orleans through Baton Rouge, Anchorage, Livonia, Ports Barre, Eunice, Kinder and DeQuincy, to the Texas State line.

The portions that are solid represent the portions owned by the New Orleans, Texas & Mexico. The portions that are broken represent places where the New Orleans, Texas & Mexico doesn't own its own railroad, but where it operates by trackage rights over somebody else's; for example, from New Orleans to Anchorage the lines are broken and that represents trackage over the Illinois Central. From DeQuincy to the Louisiana State line the line is broken, representing trackage over Kansas City Southern.

Now, that is the parent company of this whole Gulf Coast System. It owns only one hundred and seventy-three miles of railroad.

The Court: Is that Anchorage to DeQuincy?

The Witness: Yes, from Anchorage to DeQuincy is all that it owns itself, and its trackage from DeQuincy to the state line is eighteen and one-half miles, and then its operation between Anchorage and New Orleans is on, not exactly a trackage, but it is on a basis which divides the revenue earned with the Illinois Central.

Now, that is the parent company of the whole system. At the Texas State line the main line of the New Orleans, Texas & Mexico stops and the Beaumont, Sour Lake & Western begins. That is the line which runs from the state line to Houston, and is represented by a single line, with an angular cross-hatching on the north side. That doesn't own all of its operated mileage, either. It owns the line from Beaumont to Houston and it uses the Kansas City Southern between the state line and Beaumont. That has a mileage of eighty-four owned miles.

At Houston the St. Louis, Brownsville & Mexico begins, and that main line extends all the way from Houston to Brownsville. It is indicated on this map by a solid single line with a V-shaped cross-hatching on the north or west.

The St. Louis, Brownsville & Mexico has a number of

branches. Some of the branches of the St. Louis, Brownsville & Mexico run from Bloomington, which is between Houston and Odem, and Corpus Christi, but most of its branches are in the Rio Grande Valley, and they are shown on the map by this single line with the V-shaped cross-hatching.

The St. Louis, Brownsville & Mexico owns five hundred and sixty miles of railroad. In other words, that is the largest subsidiary—

(The Court was here interrupted by another matter.)

The Witness (resuming): —in the Gulf Coast Lines System. The second largest subsidiary in the system is the San Antonio, Uvalde & Gulf. That is shown on this map beginning at Corpus Christi on the Gulf Coast, north of Brownsville, and is shown with a single solid line cross-hatched by a rather long series of dashes solid dashes, on the south or west side of the line. It has a line running from Corpus Christi to San Antonio and then another branch off at North Pleasanton, in a kind of U-shaped swing to the west to Uvalde, which is west of San Antonio. That subsidiary owns three hundred and fourteen miles of line.

The map shows that all of the other subsidiaries—I don't think it is necessary to point out the individual lines, but most of the rest are all pretty small. In fact, nearly every branch line is a separate corporation. For example, there is a line in the very eastern part of Texas crossing the main line at Mauriceville, running from Orange to Newton. That one branch line that crosses the main line at that point is the Orange & Northwestern Railroad Company. That has sixty-two miles of railroad. Similarly, from Houston, extending east and a little south, is a short branch to Goose Creek, which is the Houston North Shore Railway Company, and so on. In other words, most of the rest of the subsidiaries are just branch lines. On any ordinary railroad system they would be just a branch line of the main system, but in the Gulf Coast Lines the setup is that they are separate corporations, separate books of account are kept, and they make separate reports to the Interstate Commerce Commission.

As we know, most branch lines in the railroads of this country can not make money by themselves; they are only important as feeders to the main lines. Railroads are justified in maintaining them because they produce traffic which will move on the main line. But the branch line by itself hardly ever makes any money on an independent basis. That is why we have, in this Gulf Coast Lines picture, a lot of subsidiaries that don't show any income; they operate frequently at deficits, and the reason is that they are branch lines which by their physical nature and character can not be expected to make money, but their existence is very well justified from the point of view of the traffic that they contribute to the main line.

Now I have a second exhibit, which shows all of these companies listed and their mileage, so that you can—

Q. Is that the exhibit to which you refer, Mr. Wyer (indicating)? A. Yes, it is.

Mr. McConaughy: I offer it in evidence.

(The exhibit last offered in evidence was marked Group Exhibit 24.) [See Vol. of Exs. p. 203.]

Q. Mr. Wyer, did you mention that portion of the Brownsville line between Algoa and Houston?

A. No, I did not specifically. That is not owned by the Brownsville, but is operated by trackage rights over the Santa Fe. That is the part directly south from Houston to Algoa. I think it is about—I don't have the exact mileage on that; forty-six miles, I believe. That is the only part of the Brownsville main line which it doesn't own, but this existence of trackage rights is an illustration of the kind of hand to mouth method in which these lines originally grew. In other words, they built a piece of line and tried to connect up with somebody else, and get a continuous line through this territory by using their facilities, and saving as much money as they could in construction. That was also to some extent the reason for the existence of these numerous companies.

This Exhibit 24 shows the mileage of each of the different companies and the interesting thing about that is that the total owned mileage of the Gulf Coast Lines is

1,594 miles and, yet, the parent company, the New Orleans, Texas & Mexico, only owns 173 miles of that, or eleven per cent., and the percentage is the same whether you figure it on the owned mileage or whether you include the trackage rights. Only eleven per cent of this system is owned by the parent company outright and operated by the parent company. That is important for this reason: That none of these companies, except the parent company, has any securities outstanding in the hands of the public except Equipment Trusts. In other words, they have no bonds or stock outstanding in the hands of the public. All of the securities of these fourteen subsidiaries are owned by this parent company, which only owns, actually, eleven per cent. of the mileage. So that the assets of the parent company are preponderantly the securities of the subsidiaries and those securities in each case represent all of the securities that the subsidiaries have outstanding, except Equipment Trusts, so that, the New Orleans, Texas & Mexico is not primarily a company whose assets are made up of railroad properties, but is primarily a company whose assets are made up of securities of other operating railroad companies. You have to keep that fact in mind all the way through this picture, in order to interpret properly what is going on here. Actually, this company that only owns 173 miles has forty-three million dollars, approximately, of bonds outstanding in the hands of the public, and that is many times its investment, its actual investment in railroad property, but the bonds represent, in effect, this interest in these other companies, which constitutes eighty-nine per cent. of the mileage of the system.

Q. Mr. Wyer, will you briefly review the chronology of acquisition of control of the Gulf Coast Lines by Missouri Pacific?

A. Well, just so we will keep them in mind, I will give a few dates here. The Missouri Pacific resolutions authorising the acquisition were passed April 19, 1924, and the application was then made to the Commission and the Commission then approved the acquisition in an order dated December 5, 1924. The Missouri Pacific directors and officers were elected to the Gulf Coast Lines companies

on January 7, 1925. So that 1924 was kind of a transition year, that is, pretty early in the year everybody felt that the Missouri Pacific was going to acquire control, but the control was not actually consummated, and the Missouri Pacific officers didn't go in, until early in 1925, so that when you are comparing what happened during this period, the years prior to 1924 were clearly old management years. 1924 was kind of a transition year, and 1925 and later were definitely Missouri Pacific years.

The Court: Mr. Baldwin took over in December?

The Witness: January 7, 1925.

The Court: The Commission authorized it when?

The Witness: December, 1924, was the date the Commission authorized the taking over, but it took about a month after that to actually make it effective.

Mr. McConaughy: Q. Mr. Wyer, the objections of Mr. Comstock charge that the Missouri Pacific was interested only in getting dividends out of the Gulf Coast Lines and that $6,200,000 dividends were declared by the New Orleans, Texas & Mexico from 1926 to 1931, inclusive: Do you agree with that charge? A. No, I do not.

Q. Will you explain your answer?

A. I might point out first that this charge is linked up especially with advances which the Missouri Pacific made, and these advances up to the end of the dividend paying period—

Mr. Biggs: If the Court please, it seems to me that this question is too general. It is going to allow this witness to go all over the thing. I think it should be a more definite question, limiting the witness to certain things.

The Court: Can you suggest the limitation?

Mr. Biggs: It is up to counsel. I object to it.

Mr. McConaughy: Your Honor, we can do this by question and answer and take up two weeks' time. I suggest that Mr. Biggs will have a right to move to strike out if Mr. Wyer makes statements that he has objection to. This is not a jury case so that anyone would be prejudiced by

whatever Mr. Wyer might say. It will greatly facilitate this proceeding and shorten the time a whole lot, of Mr. Biggs and every one else, if we are allowed to proceed in this manner. I don't think Mr. Biggs need be prejudiced. He can move to strike out.

Mr. Biggs: Are you suggesting that I interrupt Mr. Wyer every minute or so, to move to strike?

Mr. McConaughy: It is all right.

Mr. Biggs: I stand on my objection. I don't know what Mr. Wyer is going to testify to and it seems impossible for me to move to strike every two or three minutes, or every five minutes or every fifteen minutes. This question is just so general that any answer could be responsive to it. I think he ought to be more definite.

The Court: Overruled.

A. During the period when dividends were still being paid the advances by the Missouri Pacific to the New Orleans, Texas & Mexico totaled $7,376,000.

The Court: The advances were how much?

The Witness: $7,376,000.

Mr. Biggs: What is that amount?

The Witness: The exact amount is $7,376,541. That is just up to the end of the dividend paying period. There were later advances after the dividend paying period, but those are the only advances made while dividends were being paid.

Mr. Biggs: What are the dates of those advances, between what dates?

The Witness: They are between November, 1928, and November, 1931. I think the first was November 30, 1928, and the last November 30, 1931, so that they cover exactly a three-year period.

During those same three years the dividends received by the Missouri Pacific from the New Orleans, Texas & Mexico totaled $2,899,050, so that the Missouri Pacific was advancing, during the dividend paying period, nearly

three times as much as they received back in dividends. Now, obviously, they were not advancing that money in order to get the dividends, because they were advancing nearly three for one.

Mr. Biggs: He is arguing the case. The witness can testify to facts.

The Court: Perhaps he—

Mr. Biggs: I move to strike it out.

Mr. McConaughy: You don't object to the statement that the advances and dividends were in the ratio of three to one; that is a fact, isn't it?

Mr. Biggs: He can state that.

The Court: Overruled.

Mr. Biggs: Exception.

The Witness: I merely mentioned that because it is one of the reasons why I feel that the Missouri Pacific was much more interested in the New Orleans, Texas & Mexico for something else besides the mere dividends that they got out of it.

Mr. Biggs: I move that that be stricken out.

The Court: Stricken.

Mr. McConaughy: Right there, I attempted to qualify Mr. Wyer as an expert. I think he is entitled to give opinions and conclusions.

The Court: Yes, he has a right to do that, I presume, as an expert. I don't think he has a right to argue the case.

Mr. McConaughy: Let it go at that.

(To the witness) Go ahead, Mr. Wyer—

Mr. Biggs: On the question of the expert, an expert is supposed to be somebody that is not interested in the picture in the slightest, not interested in the result or anything else. I think if I cross-examine Mr. Wyer the evidence will show that he is interested in this.

Mr. McConaughy: If you want to take that up go ahead. If he is not an expert I want to be straightened out on that.

Mr. Biggs: I am not objecting to him, but as I understand the law in regard to testimony of experts, the witnesses are only witnesses, they are allowed to testify where they have no interest in the controversy before the Court.

Mr. McConaughy: There is no showing that Mr. Wyer is interested. I am inviting him to cross-examine Mr. Wyer.

The Court: He has an opportunity to ask and qualify him.

Questions by Mr. Biggs:

Q. Mr. Wyer, in regard to this present Plan of Reorganization that is now before the Court, whom were you employed by to assist in the working out of that plan?

A. Well, I was requested to—

Q. Whom were you employed by?

A. I am going to answer your question, if you will let me.

Q. I think that is susceptible of a statement of the name of the employer.

A. The answer is not as simple as you apparently think it is.

Q. You can have an opportunity to explain your answer.

A. I haven't even given the answer yet.

The Court: Proceed.

The Witness: I was requested to undertake the job of, you might call it, [negotiater,] in connection with this Plan, by two of the parties in the case, one of them the First and Refunding Committee and the other the Alleghany Corporation. It was agreed between the two parties that I would be compensated for my work by the Alleghany Corporation, but I was not employed by either of them. My part in the case was as a result of a joint request of the two of them that I undertake the work.

Mr. Biggs: Q. Don't you get some extra compensation if this Plan is finally approved and put into being? A. No.

Q. You get no other compensation than what has already been paid you?

A. All of my compensation has not yet been paid me, but the payment of this remainder of it is not dependent upon the consummation of the Plan.

Q. Is it dependent upon approval of the Plan by this Court? A. No.

Q. There is no compensation that is contingent in any way, shape, or form? A. No.

Q. But you are being paid by Alleghany, which is one of the proponents of this Plan?

A. Yes, for my work in connection with the negotiation of the Plan.

Q. Who is paying you for appearing in Court today?

A. The Institutional Group.

Mr. McConaughy: Is that all, Mr. Biggs?

Mr. Biggs: Yes.

Mr. McConaughy: Q. Now will you proceed, Mr. Wyer?

A. Well, I—

Mr. McDonald: May I ask the witness one question with reference to Alleghany, which has been brought in here?

The Court: Very well.

Mr. McDonald: Mr. Wyer, is Alleghany making application for reimbursement of any expenditure to you?

The Witness: I understand so.

Mr. McDonald: There will be an application before the Court?

The Court: Is Alleghany what?

Mr. McDonald: Making an application from the Debtor estate for any funds advanced for his fee.

The Witness: Yes, I understand they are. I think, in view of the ruling, I think perhaps that is as much as I need to say on that last question at this time.

I think the answers to later questions will develop further why I don't think the charges in the objections are correct.

Mr. McConaughy: Q. Other objections made by Comstock charge that the Missouri Pacific caused the New Orleans, Texas & Mexico to postpone needed improvements in order to pay dividends when the cash was not available; is that a fact? A. No.

Q. Will you explain your answer?

A. I think in order to explain my answer to that question you have really got to consider, or review briefly, first, the entire financial policy of the Missouri Pacific System, because the New Orleans, Texas & Mexico was part of that system and these transactions that are under review here can only be considered in the light of the background of what was going on on the Missouri Pacific as a system during these years.

There was [an] new management of the Missouri Pacific in 1923. Mr. Baldwin came to the road as president at that time. Mr. Williams was chairman of the Board in New York and he handled the finances, and he and Mr. Baldwin worked out a very far-reaching policy or, I will say, inaugurated a very far-reaching policy in connection with the building up of the Missouri Pacific.

Mr. Baldwin felt that large sums of money ought to be spent for the Missouri Pacific in the way of improvements to make it a first-class railroad in every respect. Of course, that had to be financed, and that was Mr. Williams' job. Mr. Baldwin's job was to plan the improvements, recommend them, and Mr. Williams' job was to obtain the money to enable Mr. Baldwin to do the job, and then Mr. Baldwin had to do the job. It was a case of teamwork between the executive head and the financial head, and part of this program involved the acquisition of some subsidiary lines which it was felt were necessary to the strategic development of the system and the acquisition of the Gulf Coast Lines and International-Great Northern was one of those acquisitions; the Denver, Rio Grande and Western was one, and that was the way I came into the Missouri Pacific picture when the Missouri Pacific acquired this interest in the Denver, Rio Grande and Western at this same time.

As the result of this program, during the years 1923 to 1930, over two hundred million dollars was spent on the Missouri Pacific alone, in the way of building it up, making a more dependable railroad out of it, making a high

speed railroad out of it, and enabling it to give more and better service throughout the entire territory. They had some rather astonishing results—

Mr. Biggs: I move that all of this statement be stricken. It is irrelevant to the issues before the Court; it is dealing with so-called improvements of the Missouri Pacific. The question here is in regard to the New Orleans, Texas & Mexico Railroad.

Mr. McConaughy: Mr. Wyer just stated that he is laying the background for what he is going to testify to about the Gulf Coast Lines, the background into which the Gulf Coast Lines fell.

The Court: Objection overruled.

The Witness: One of the major results of this program was the fact that the Missouri Pacific very greatly increased its proportion of the whole railroad business of the southwestern part of this country, which it was handling, and this statement applies to the Missouri Pacific System, including all the subsidiaries.

At the beginning of this expansion period the Missouri Pacific Lines, and I include the lines that were later acquired, so that the figures are comparable all the way through—at the beginning of this expansion period the Missouri Pacific System was only handling about twenty-two per cent. of the total railroad business in the southwest, and in 1930, at the end of this period of expansion—

The Court: What do you call the beginning?

The Witness: 1923. In 1930, at the end of that period of expansion it was handling about twenty-seven per cent. of the total railroad business of the southwest. Now, that increase from twenty-two to twenty-seven per cent. doesn't sound very impressive, perhaps—just an increase of five percent.—but in the history of railroad expansion and development in this country, in the twentieth century at least, I have never heard of a shift of traffic comparable in amount to that. In other words, railroad territories are pretty well fixed and the hold that different railroads have on business is fairly well fixed, assuming that each railroad gives good service and has an active traffic depart-

ment and solicitation of business. But here was a case where a railroad made itself so much better than the other railroads in its territory, in its ability to give service and conduct business, that it in effect performed a revolution in the distribution of business in the territory which it served, and a major factor in doing that was this [expenditre] of two hundred million dollars for improving the Missouri Pacific Lines.

There has been an intimation here that during all this period when this was going on the New York Office and later the Cleveland Office, were interested solely in earnings and didn't pay attention to the operation of the property, but this expansion couldn't have been carried out without the help of the financial officers in New York or Cleveland in providing the money, and that was the prime objective all through this period, to assist in this expansion of the property; of course, with the view that ultimately it would result in earnings, but it was primarily the first job to build up the Missouri Pacific Railroad.

Mr. Biggs: I move that that all be stricken out as argument, not responsive or relevant to the issues in this case.

Mr. McConaughy: It seems to me that Mr. Wyer has been describing a state of facts.

Mr. Biggs: He has gone way beyond it.

The Court: This man was holding a responsible office. He probably knows as well as anybody what was going on.

Mr. Biggs: Let him state facts, but not conclusions and argument.

Mr. McConaughy: It seems to me that that is what he has been stating. He describes what went on in New York and Cleveland offices.

The Court: This man was a very important cog in the wheel. He was in touch with everything that was going on—

Mr. Biggs: I don't doubt that, but I don't see why he should have special dispensation, so to speak, because of that.

The Court: I don't know whether the Court can get a better picture of what their situation was—

Mr. Biggs: If he wants to stand here and state the facts as counsel I have no objection.

The Court: Proceed.

The Witness: I have an exhibit which reflects this development program.

Mr. McConaughy: Q. Is this the exhibit to which you refer, Mr. Wyer (indicating)? A. Yes, it is.

Mr. McConaughy: I offer that in evidence. That is marked Group Exhibit 25. [See Vol. of Exs. p. 269]

Mr. Biggs: Your Honor please, I wish to object to the offer in evidence of Group Exhibit 25, as on examination I find this exhibit pertains solely to the Missouri Pacific Railroad Company—a statement of the investment in road equipment from 1917 through 1944. There is certainly a tremendous lot of this that is irrelevant under any circumstances, and therefore is irrelevant to the issues in this case, because it deals solely with the Missouri Pacific and not the N.O.T. & M.

Mr. McConaughy: This is a background of what he is coming to on the Gulf Lines.

The Court: Objection overruled.

(The exhibit last offered in evidence was marked Group Exhibit 25.)

Mr. McConaughy: Go ahead, Mr. Wyer.

A. This exhibit starts with June 1, 1917, because that was the beginning of the present Missouri Pacific Railroad Company. It came out of receivership on that date.

The Court: On what date?

The Witness: June 1, 1917. This exhibit starts at the beginning of the corporate life of the present company and it shows the changes—

The Court: Have you a copy of that exhibit?

Mr. McConaughy: You have one there.

The Witness: Underneath that top sheet, I think. This shows the investments in road and equipment during that period, by years. The road figures are shown in the first five columns and the equipment figures in the second five, and the total of those in the last five columns on the right.

The most interesting and significant part of this is in column 12, which shows the gross expenditures, every year, for additions and betterments to the Missouri Pacific Railroad. I have shown the whole period from 1917 to 1944, so that you may get an idea of how much greater the program of improvement was during the years 1923 to 1930, than either before or after that time.

In 1923, you will notice that the gross expenditures were $16,303,720. You will notice prior to that time no year came up to that, and most of the years were very much less than that.

The Court: The only one that approaches it is 1920. Was that after the road was taken from the—

The Witness: That was after the road was taken out of Federal control, and you notice in column 6 that $11,375,000. of that was new equipment, so there was not an awful lot done to the railroad itself, but new equipment was acquired in 1920, or at the end of Federal control. That is what brings 1920 up to that high figure.

You will notice beginning with 1923, it went—with exception of 1923, which was the first year, and 1928 when only thirteen million was spent, there was not a single year where the gross amount of money spent was less than twenty million dollars, and it went up to as high as thirty-three million odd in 1929. 1930 was the last year of the program and that year twenty-five million dollars was spent. In those eight years, 1923 to 1930, over two hundred million dollars was spent. You can see from this that after that program was completed there has never been a time when expenditures have come up to the level of those eight years' construction, which far exceeded what was spent before. Now, that illustrates, I think, very forcibly what a tremendous job was being done in the way of building up the Missouri Pacific during those years.

Mr. Biggs: He is starting to argue again.

Mr. McConaughy: He is stating an opinion based on facts. I think he is entitled to give his opinion.

The Court: It is almost impossible to keep out some of that. Objection overruled.

The Witness: Now, just to show how those years average out from 1917 to 1922—these averages are not on the exhibit but they are based on the exhibit—from 1917 to 1922, prior to the beginning of what I call Mr. Baldwin's improvement program, the average expenditure was $7,118,000. During the eight years of Mr. Baldwin's program the average expenditures were $23,785,000., or more than three times as great as they were before that period, and from the end of Mr. Baldwin's program to the beginning of war—1931 to 1939, that is a nine-year period, the average was $5,988,000., or less than one-fourth of Mr. Baldwin's program. The average during the war period when camps were being built and additional facilities were being constructed for war purposes, 1940 to 1943, inclusive, the average was only $10,293,000., or less than one-half of the Baldwin period.

Mr. Biggs: May I interrupt one minute? Going back to this question of your interest in the Plan, I would like to just ask one more question of the witness, with Your Honor's permission.

The Court: Very well.

Mr. Biggs: If Your Honor please, I have before me the application of Alleghany Corporation, which consists of the affidavit of C. L. Peckham, in support of the petition of Alleghany Corporation for reimbursement of expenses, which has been duly filed in this Court and filed before the Interstate Commerce Commission. On page 3 of said affidavit of Mr. Peckham is this statement, top paragraph, last three lines, page 3:

> "Alleghany Corporation has already paid Mr. Wyer the sum of $22,465.86 and is obligated to pay him an additional sum of $7,500. upon the consummation of the Plan."

Is that correct, Mr. Wyer?

The Witness: I think the application says that but that is not a correct statement of my arrangement with Alleghany. When that wording was called to my attention —I might say I had no part in the preparation of that— I immediately took it up with Alleghany Corporation, because that was not a statement of my understanding with them, and I asked them why they had set it forth in that way, and they advised me that that was merely a statement as to the time of payment and they had no intention of implying that payment was in any way conditioned upon consummation.

The Court: You are to be paid—

The Witness: I am to be paid whether consummated or not, but the time of payment is consummation. My understanding was quite clear with them as to that.

The Court: If you didn't have consummation you wouldn't be paid?

The Witness: I will have to work out another arrangement with them as to when I am to be paid, but there is no question but that they owe me $7,500. and that I will be paid, regardless of what happens to any particular plan.

Mr. Biggs: But your present arrangement with Alleghany is that you are to receive $7,500. when the Plan is consummated; is that correct?

A. Yes, with the explanation that I have given.

Mr. Biggs: In view of that statement I move that this witness's testimony be limited to statements of facts, and that he is not qualified to testify as an expert in this proceeding.

The Court: Overruled.

Mr. McConaughy: Proceed, Mr. Wyer.

The Witness: Of course, as I have said, the Missouri Pacific had to finance this tremendous improvement program. One of the ways which it used to finance this program was to put all its earnings into these improvements, and this was done through 1927. In other words,

from 1917 through 1927, the Missouri Pacific did not pay any dividends on either its preferred or common stock.

The Court: What years?

The Witness: 1917 to 1927, inclusive. During this time the company earned approximately forty-nine million dollars available for dividends, all of which they poured back into the improvement program. But, of course, from the size of the program, as I pointed it out, this forty-nine million dollars obviously did not take care of the investment, so that during this whole period the debt of the Missouri Pacific increased about ninety-eight million dollars, or just approximately twice the amount that was put into the improvements from earnings.

The policy which was followed by the Missouri Pacific in borrowing this money is rather important—

Mr. Biggs: I object to this witness stating what the policy of the Missouri Pacific was.

The Court: I think the Court wants to know about it. Proceed.

The Witness: This policy is important to understand, because it set a pattern which was followed not only on the Missouri Pacific but on the N. O. T. & M., and even on the subsidiaries of the New Orleans, Texas & Mexico. The Missouri Pacific, as funds were needed to pay for these improvements, these funds were borrowed on short terms, in the case of the Missouri Pacific usually from banks, although in some cases the Missouri Pacific borrowed from its own subsidiaries, but these moneys were borrowed on short terms and when the borrowings were sufficient to justify the floating of a bond issue then application was made to the Interstate Commerce Commission for approval of that issue, arrangements were made with bankers to sell the bonds, and then when the bonds were sold the money would go into the Missouri Pacific treasury to reimburse it for these improvements, and the cycles would start over again.

I have three exhibits to show exactly how this pattern worked on the Missouri Pacific, the parent company.

Q. Are these the three exhibits? A. Yes, they are.

Mr. McConaughy: I offer them in evidence. That will be Series G cycle, Exhibit No. 26; Series H cycle, Exhibit No. 27; Series I cycle, Exhibit No. 28.

(The said documents were marked by the reporter as Group Exhibits Nos. 26, 27 and 28, respectively.) [See Vol. of Exs. pp. 271, 273, 275.]

Mr. Biggs: What about Series F?

Mr. McConaughy: The first one was G.

The Witness: Now, these three exhibits cover the—

Mr. Biggs: (Interrupting) Just a minute. If Your Honor please, I object to the introduction of these three exhibits in evidence, as they are irrelevant to any issue in this case, they deal solely with—

The Court: What are these exhibits there now?

(Mr. McConaughy explains the exhibits to the Court at the bench.)

The Court: Overruled.

The Witness: These three exhibits refer respectively to the financing culminating in the sale of 25 million Series G First and Refunding Bonds, 25 million Series H First and Refunding Bonds, and $61,200,000 Series I First and Refunding Bonds.

And I would like to take the first one, Exhibit No. 26, which refers to the Series G bonds, and go through it in detail, because it, as I say, it sets a pattern which we find followed all the way through the financing operations of these companies. Now, in March, 1927, 95 million of the Series F First and Refunding Bonds had been sold and a new cycle of financing improvements began after the sale of those bonds.

Now, this exhibit shows in the first column, the top figure, that as of March 31, 1927, which was the end of the period covered by the Series F financing, the Missouri Pacific's investment in road and equipment was $461,813,819; and over in the right-hand column, on the same line, you will notice that the First and Refunding Bonds outstanding as of that same date were $112,840,500, and

you will notice that in the intervening columns there are no figures, indicating that there were no short term loans outstanding as of that date.

Now, then, as the improvement program proceeded during the year, it finally became necessary to borrow money, and these borrowings are shown in the third column of figures.

The first borrowing was 5 million dollars from the Guaranty Trust Company, in August, 1927, and then the borrowings went on as shown there, two million dollars more from the Guaranty Trust in September, $750,000 from the International-Great Northern in March, 1928, another million from the Guaranty Trust Company in April, 1928, $150,000 from the Missouri Pacific Hospital Association in May, and then in August, some loans from some of the St. Louis banks: a million dollars from the National Bank of Commerce, 750,000 from the First National, and 250,000 from the Boatmen's Bank, and so on, until at the end of August, $11,400,000 had been borrowed on short term.

Now, you will notice also that at the end of August, in the second column, the increase in capital account since March 31, when this cycle of financing started, had been $29,723,000. In other words, the Missouri Pacific had spent over 29 million dollars for improvements on the property, it had borrowed $11,400,000, and it had reached the point where it was necessary to float another bond issue to take up the short term loans, and start another cycle of financing in the course of this improvement program; so in November, 25 million of Series G bonds were sold and the loans were all paid off, and their repayment is shown there.

Now, that was a well established procedure, and it was definitely planned out in every case, and the procedure even went as far as this: I know in the later years when I was personally handling the floating of these bonds myself, we even went to this extent: that as these capital expenditures were made, we would file with the Interstate Commerce Commission detailed lists of these improvements, listing them one by one, and filing with this list a complete set of what we call the A. F. E.s, which are the

Authorities for Expenditures. Now, that is a document which is prepared in the railroad offices when a project to spend money is up for approval, and that document sets forth exactly how much money may be spent, how large the quantities of all the different classes of material are, it specifies even the number of bolts and spikes, and other pieces of track material, and the feet of lumber which are to be used, and every item of material is spelled out in detail, and the labor is spelled out in detail, and that is a document required as to each project. Now, there were budgets, of course, for every project, no matter how small, and we would file in advance, while this work was going on, and before we were ready to apply for authority to sell the bonds, we would file this information, so that the Commission could be checking this over and satisfy themselves that these projects were properly capitalizable, so that when it came time to file the application to sell the bonds, then the Commission would have checked over the projects and would have been able to approve the application quickly and with a minimum of delay.

Now, that just illustrates the planning that went into the handling of this financing, and it was all based upon improvements to the property.

Now, I don't think it is necessary to go over these exhibits 27 and 28; they are simply additional illustrations of this same pattern applying to later bond issues. But this is important, because it does set the pattern for what happened on the Gulf Coast Lines later.

Now, the next exhibit that I have shows the application of this same pattern to the Gulf Coast Lines.

Q. Is that the exhibit to which you refer (indicating)?
A. Yes.

Mr. McConaughy: I offer it in evidence, marked Group Exhibit No. 29.

(The said document was marked by the reporter as Group Exhibit No. 29.) [See Vol. of Exs. p. 277.]

The Witness: Now, this exhibit shows the financing cycle in connection with the Series D bonds of the New

Orleans, Texas and Mexico, covering $5,900,000. Now, of course the New Orleans, Texas and Mexico was not as big a railroad as the Missouri Pacific, so that it did its financing in smaller bites, and whereas the Missouri Pacific would sell 25 million at a time, or more, the Gulf Coast Lines' cycle in this case was $5,900,000. Now, this shows exactly the same pattern, if you will note—

Mr. Biggs: (Interrupting) Just one minute, if Your Honor please.

(Q.) Were you connected with the New Orleans, Texas and Mexico Railroad in 1926? A. No.

Mr. Biggs: (Q.) With the Missouri Pacific in 1926?

A. I was with the Denver and Rio Grande Western in 1926.

Mr. Biggs: I object then to this testimony, if Your Honor please.

The Court: Overruled.

Mr. McConaughy: Your Honor, I would just like to ask a couple of questions in connection with that objection, if I may.

Q. Mr. Wyer, this exhibit is based upon company records? A. Yes, it is.

Q. As you have testified?

A. And it is based upon records which I had access to later on when I became a financial officer of the New Orleans, Texas and Mexico.

Mr. Biggs: If Your Honor please, he is testifying to policy, conclusions, what was in the minds of the Board and the officers in 1926, of the New Orleans, Texas and Mexico Railroad, when he has admitted he had no connection with the railroad at that time. I really think that his testimony is subject to objection.

Mr. McConaughy: Mr. Wyer is using these facts to support his conclusion that that was the policy.

Mr. Biggs: He is testifying that in 1926 that was the

policy, when he had no connection with the New Orleans, Texas and Mexico Railroad.

Mr. McConaughy: This is evidence of the policy.

The Witness: Well, I can say this, that—

Mr. Biggs: (Interrupting) He can introduce—that is right—records of the company, I have no objection to that, but when he starts to testify what the policy of the railroad was in 1926, when he had no connection with it.

The Court: I don't know, unless that policy could be introduced—

Mr. McConaughy: That is the theory, Your Honor.

The Court: From the pleadings here.

Mr. McConaughy: That this exhibit is evidence of the policy.

The Witness: I might say this, in explanation of that, that when I went to New York in February, 1929, as assistant to the Chairman of the Board of Directors of the Missouri Pacific and the New Orleans, Texas and Mexico, this question of financing policy was of course one of the first things that was discussed with me by the Chairman. In fact, the whole work of the Chairman's office centered around this, and I became a part of it immediately, and the policy which was being pursued at that time was explained to me, and I took part in progressing it thereafter.

Now, take for example Exhibit No. 27, which covers the cycle of the 25 million First and Refunding Series H Bonds: that cycle started in November, 1928, three months before I came to New York, and was going on at the time that I arrived there, and I had a part in it all the rest of the way, and I handled the proceedings before the Interstate Commerce Commission in connection with the sale of these bonds, and I handled the preparation of dockets for the meetings of the Board of Directors of the Missouri Pacific, in connection with that financing, and I know the information that was presented to the Board, and this was all in line with the policy which was in effect at that time

and which had covered this previous financing, and which covered the current financing that was then under way.

The Court: The objection is overruled. Announce a three-minute recess.

(Brief recess.)

Q. Mr. Wyer, had you completed your explanation of Group Exhibit No. 29?

A. No. I really had not started on that. I would like to go through Exhibit No. 29 a little in detail.

The Court: What is that? That is the—

The Witness: That is typical of financing the improvements on N. O. T. & M. This particular cycle—

Mr. Biggs: (Interrupting) Just a minute. Will the record show that I am objecting to any testimony?

The Court: The record will show, Mr. Biggs, your objection lies to all of this.

Mr. Biggs; All right.

The Witness: This particular cycle started on August 31, 1926. In that month, the Series C Bonds of the N. O. T. & M. had been sold in the amount of $4,600,000, and that had cleaned up the financing of improvements on the Gulf Coast Lines up to that time. I should explain that the First Mortgage of the N. O. T. & M. permits the N. O. T. & M. to authenticate bonds or permits the mortgage trustee to authenticate bonds against improvements on all of the Gulf Coast Line Companies, since all of the securities of the subsidiaries are pledged under the mortgage.

Now, the investment in road and equipment of the Gulf Coast Line Companies on August 31, 1926 is the first figure on this exhibit, $61,373,000, and there were outstanding $37,070,000 First Mortgage Bonds at the beginning of this cycle. That is shown in the top of the last column on this exhibit. Now then, as the work progressed and the money was spent, these short term loans had to be borrowed by the N. O. T. & M., and you will notice that the first loan was borrowed in June, 1927, and in that month there were two loans from the Mercantile Trust Company of St. Louis,

totalling $1,574,024; that in August, there were advances from the Missouri Pacific Railroad Company, $335,000; in other words, the financing of the improvements on the Gulf Coast Lines was in part through advances from the Missouri Pacific—the parent company. In September, there was an additional advance from the Missouri Pacific of $1,465,000, and the loan from the Mercantile Trust Company was repaid, so that from that time on, for the time being, the entire program was financed by the parent company through advances.

Then in October, there was another advance from the Missouri Pacific of $155,000; in November, another advance of $650,000; and in December, another advance of $425,000; and another one of a hundred thousand, and then in December, another loan from the Mercantile Trust of $1,403,739, making a total short term borrowing during this financing cycle of $4,533,739. And then in February, 1928, $5,900,000 of the Series D Bonds were sold, and the Mercantile Trust and the Missouri Pacific were both repaid.

Now, there is an interesting thing here which I think has a bearing on what comes later. The N. O. T. & M. was paying dividends in 1927 when these advances were made, and these advances were made in the same months in which N. O. T. & M. was paying dividends, and yet the Interstate Commerce Commission authorized the sale of these bonds and the money was used to repay these advances, and there was never any question raised at that time about advances being made for the purposes of paying dividends.

Mr. Biggs: Just a minute, now. If Your Honor please, I believe that that statement should be stricken out, unless he states that there was no objection made by the Interstate Commerce Commission. There is no evidence in this record that the Interstate Commerce Commission was fully cognizant of all the facts. The mere fact that they made no objection, unless there is a full showing that they knew all of the facts, does not justify the conclusion drawn by this witness.

The Court: They authorized—

Mr. McConaughy: May I ask the witness a question on that?

The Court: (Continuing)—all the bond issues, didn't they?

The Witness: Yes, sir, they did.

Q. What did the reports of the Gulf Coast Lines to the Interstate Commerce Commission show with reference to dividends?

A. They showed that the dividends were paid at the 7% rate during this year.

Q. And they also showed the earnings of the Gulf Coast Lines? A. Yes.

Mr. Biggs: I move that that evidence be stricken, if Your Honor please.

The Court: Overruled.

The Witness: Now, that cycle of financing on the N. O. T. & M., you will notice, came to a close in February, 1928, when these $5,900,000 of bonds were sold. Now, that was the last issue of bonds sold by the N. O. T. & M., so that the next financing cycle began immediately thereafter, and that is the financing cycle that is under discussion in this hearing. In other words, in February, 1928, the N. O. T. & M. sold these bonds, cleared up these short term loans, about two-thirds of which were advanced from the Missouri Pacific, and a new financing cycle then started, just exactly like these other four financing cycles that I have testified to on the Missouri Pacific, one of them on the N. O. T. & M. That is the cycle—

Mr. Biggs: (Interrupting) Just a minute. I move that this statement "just exactly like these other cycles" be stricken as a conclusion of the witness and an argument.

The Court: Overruled.

The Witness: And that is the financing cycle out of which the advances accrued which were still outstanding at the time when the Missouri Pacific and the N. O. T. & M. went into bankruptcy in 1933.

Now, in connection with this last cycle, which started in February, 1928, and which was never completed, because the N. O. T. & M. was never able to sell bonds because of the condition of the financial markets after the depression started, that last cycle was the cycle which was under way when I was in the New York offices of the Missouri Pacific and the N. O. T. & M., and it was the cycle that I participated in. As I have said, one of the things which I did, part of my duties was to prepare information for the Chairman of the Board and for the Board of Directors in connection with matters coming up for consideration, and during this financing cycle, the question of advances to the N. O. T. & M. would come up for consideration, and the point I want to make is that these advances were always tied into the improvement program as they were considered by the Board and approved by the Board from time to time, and I have two exhibits which are typical of the kind of information that was placed before the Board at its meetings when it was considering the question of advances to the N. O. T. & M.

Q. Are these (indicating) the two exhibits to which you refer? A. Yes, they are.

Mr. McConaughy: I offer them in evidence.

Mr. Biggs: Just a minute. I would like an opportunity to examine these.

The Court: Very well.

Mr. McConaughy: The one marked "Status of Authorities for Expenditures to February 23, 1929" is marked Exhibit No. 30; and the one headed "Detail of Estimated Advances in 1929 by Missouri Pacific to Gulf Coast Lines" is marked Group Exhibit No. 31.

(The said documents were marked by the reporter as Group Exhibits, respectively, Nos. 30 and 31.) [See Vol. of Exs. pp. 279, 280.]

Mr. McConaughy: Just a minute, Mr. Wyer.

Mr. Biggs: All right, you may proceed.

Q. Proceed, Mr. Wyer.

A. Exhibit No. 30 is headed "Status of Authorities for Expenditures to February 23, 1929." Now, that document, you will notice, carries in the corner the initials "WHW: WDS." "WHW" are the initials of William H. Williams, the Chairman of the Board; and "WDS" are the initials of W. D. Steele, who was Chief Clerk in my office in New York.

Q. Now, would you state the source of this exhibit No. 30? It is not recited at the foot.

A. This is taken—this is a copy of the statement in the files in New York of the Missouri Pacific, which were later transferred from New York to Cleveland, and then from Cleveland to St. Louis, and those files are now in St. Louis, but this was a file which was current at the time in New York, and the initials means that it was prepared by Mr. Steele, at the instruction of the Chairman of the Board. Mr. Steele being my Chief Clerk. You will notice that this is a summary of the improvement work in progress on the Gulf Coast Lines, showing how much is still to be spent and how much the financial forecast covering the next twelve months has indicated will be spent during those twelve months, and the important figure on this analysis, which I might say was made up every month in the office of the Chairman of the Board, is the last figure at the bottom of the page, of $1,815,230. In other words, that was the requirement of the Gulf Coast Lines for the next twelve months as estimated in view of the status of the work and the reports from St. Louis as to its progress.

Q. Now, Mr. Wyer, that was typical of a whole series?

A. Yes, sir.

The Court: Of a whole what?

Mr. McConaughy: Of a whole series.

The Witness: One of these was prepared every month. Now, this exhibit ties right into the next exhibit No. 31.

Q. And before you get to No. 31, will you please state where that came from?

A. Exhibit No. 31 came from another file in the same office, another file which was a current one in the same office at that time.

The Court: What is the heading on that?

Mr. McConaughy: Detail of Advances.

The Witness: 31?

The Court: Yes.

The Witness: Detail of Estimated Advances. Now, you will notice that carries in the upper right-hand corner the initials "WHW:WW." The last two initials being mine, and that means that this statement was prepared by me, at the instructions of the Chairman of the Board. And this sets forth all of the cash available or estimated to be available to the Gulf Coast Lines during the next twelve months, and all of the cash requirements, and shows how much is going to have to be advanced from the Missouri Pacific during the next twelve months in order to enable the Gulf Coast Lines to meet these cash requirements, and you will notice that the figure from the preceding exhibit of $1,815,230 is carried into this Exhibit No. 31 as the fifth figure in the column of figures. In other words, what was done in New York during this period, a detail analysis of the state of the improvement program was made, and then that was carried into the forecast of the cash situation, in order to determine how much the Missouri Pacific would have to advance in order to carry on the program. So this was a definite tie-in which was made each month between the improvement work and the advances of money by the Missouri Pacific.

I think that is all I need to say about these two exhibits.

Now, these advances which were being made at the time that these exhibits 30 and 31 were prepared in New York back in 1929, as I said, started with the—the cycle started in February, 1928, the first advance of money was made in November, 1928, because up to that time the Gulf Coast had enough working capital to carry on the work without borrowing. That cycle continued on down to the bankruptcy. The advances divided themselves logically for discussion into two parts. The advances that were made up through the period when dividends were being paid and the advances made after the dividends were being paid.

I have already stated that the advances during the dividend-paying period were $7,376,541, and the advances made after the continuance of dividends were $3,188,686. Those two figures total the $10,565,227 which are dealt with in the reorganization plan.

Now, I have an exhibit which sets forth these advances—

Q. (Interrupting) Mr. Wyer, just before you get to that exhibit, I would like to ask you this question: Were the additions and betterments made on the properties of all the Gulf Coast Line Companies between January 1, 1928 and November 30, 1931, reported in detail to the Interstate Commerce Commission? A. Yes, they were.

Q. And will you explain how and why this was done, and the results which followed?

A. Well, I had in mind doing that a little later.

Q. All right.

A. I think it fits in a little better later on.

Q. All right, if you prefer to proceed with this exhibit, go ahead.

A. Because I want to show just what those expenditures are, and this next exhibit shows that.

Q. Just a moment, Mr. Wyer. Is that (indicating) the exhibit to which you refer?

A. That is my next exhibit, yes, sir.

Mr. McConaughy: I offer it in evidence, marked Group Exhibit No. 32.

Mr. Biggs: If Your Honor please, I hate to be interrupting all the time.

The Court: Oh, don't mind that.

Mr. Biggs: Would it be all right for me to reserve my right to object to these exhibits until a later date? As they come up, I do not have time really to examine them.

Mr. McConaughy: That is perfectly all right.

The Court: Very well.

Mr. Biggs: Then there won't be any need of my making objections.

The Court: No.

Mr. McConaughy: By later date, I presume he means before this hearing is closed?

Mr. Biggs: That is correct.

(The said document was marked by the reporter as Group Exhibit No. 32.) [See Vol. of Exs. p. 281.]

A. This next exhibit is an analysis of the advances which had already been presented in the hearing before the Commission, but it adds to it certain information that has not previously been presented, which I think is important from the chronological point of view.

The first two columns show the advances, or the first column shows the individual advances and also the individual repayments to the extent that they were credited to principal; and the second column shows the cumulative amount of the advances up to the different dates shown. In other words, the second figure in the second column of $400,000 adds the $100,000 advance on September 1, 1928, and so it is a cumulative figure.

And then the third column shows the increase in investment, that is, the improvement on the property, on a net basis after deducting retirements between the different periods; and the fourth column is the cumulative figure for the improvements on the property. In other words, as the money was being borrowed, these improvements were being made, and this exhibit shows at any given date how that amount of improvements compared with the amount of the borrowings. For example, if you go down to November 29, 1929, you will see that as of that date, the advances total $3,010,000, and the improvements made up to that date total $5,373,895.

Now, the last dividend was paid on December 1, 1931, and the last advance made prior to that date was November 27, 1931, and you will notice that as of that date the advances—

The Court: (Interrupting) This is November, when?

The Witness: November 27, 1931.

The Court: Yes.

The Witness: And you will note that as of that date the advances total $7,416,544, and the improvements total $7,417,593. Now, of course the Board of Directors of the N. O. T. & M. was not good enough to make those figures come out that closely, because they had to estimate in advance; when they would estimate in advance, they did not know what the accounting figures were going to show; they knew what the St. Louis and Houston reports were as to the progress of the work, and they were, of course, as I have shown, trying to keep the advances within the improvements, so that I think it was perhaps more good luck than anything else that they came out so close on that date; but at any rate, they did stick within their improvement expenditures as of November 27, and that was the basis for the advances all during this period, and it shows that the policy maintained itself successfully up through the date of the last dividend payment. Now, of course, after the dividends stopped, the advances had to continue. They continued, however, for a different purpose, because, of course, there were some improvements still being made, but the main improvement program had stopped, 1930 was the last big year, as I have shown, and the Gulf Coast Lines were running into deficits, and these advances made after the date of the last dividend were made to a considerable extent to meet these deficits, and the same considerations did not hold, but as long as the dividends were being paid, the advances were to cover the improvements to the property.

Now this exhibit also shows in the columns to the right of these first four columns the cash payments made immediately after advances were received, and this shows that in many cases the advances were made shortly prior to the date dividends were paid. There were also in those days payments of bond interest, sinking fund payments, equipment trust payments of interest and principal. This sets forth all of the big payments which the New Orleans, Texas and Mexico or its subsidiaries were making immediately after the dates of these advances.

Now, it is the fact that these advances were made in many cases just prior to the dates of the dividends. That has led to the charge that these advances were made for the payment of dividends. Now, that involves, a discussion

of that charge and the facts in this case involve perhaps a reversion to the basic concepts of financing a railroad and in order to understand what I consider the true facts, you have to really get back to bedrock on this question.

A railroad has basically two sets of accounting figures. It has a balance sheet which sets forth its assets and liabilities, including its profit and loss surplus at any time, and it has an income account which sets forth its current operations, the income and expenses, and the net income, and sets forth the amounts that are earned, available for interest and dividends.

Now, actually, however, although it has two sets of accounts in that way, it only has one cash fund. Ordinarily, there is no attempt to separate the cash into two funds, although actually what a railroad is doing is, it is running one cash fund in connection with its assets and liabilities, that is, which is affected by changes in balances, and it is running another cash fund, which is its current operating fund.

Now, when a railroad is making improvements to its property and is financing those improvements through the sale of securities, as the Missouri Pacific and the N. O. T. & M. were doing at this time, the provision of cash to pay for those improvements is a transaction that affects the balance sheet only. That is a phase of the cash fund, if there were a separate cash fund, which would affect only that part of the books.

Now, the payment of interest and dividends, on the other hand, is a transaction which occurs in the other cash fund; that is, which affects only the income account, and the money comes out of the current earnings then, if any shown, or it might come out of past earnings, but in any event, it comes out of earnings of the property, either past or present.

Now then, what was happening on these companies, basically, was this: the improvements were being made, the cash was being provided for those improvements on the one side, the property was being operated, the cash was being provided from those operations for the dividends on the other side. Now, since the two cash funds were intermingled, that was all handled in one fund, and when money was needed for improvements, nobody took

particular dollars out of the cash fund and said, "These are the dollars that are provided for the improvement, and we will use those particular dollars for the improvement", but they took whatever dollars were in the fund, and, of course, the earnings go on day by day, the fund increases day by day, and in most instances, in many instances the earnings dollars were taken to pay for improvements, as a practical matter, then when it came time to pay the interest on the bonds, or pay the dividends which had been earned and which should have come out of the earnings fund, that money was gone, had gone, it had been used to pay for improvements, and then the money that the Missouri Pacific stood ready to advance to finance those improvements was advanced, because the N. O. T. & M. had cash requirements to meet in the way of interest and dividends. Actually, there was a commingling of the cash funds. The Missouri Pacific advances were basically for improvements, but if improvements had been paid for only out of Missouri Pacific funds, the Missouri Pacific advances would have had to start earlier and the interest charges paid by the Gulf Coast would have been increased, so that it was in the best interests of the Gulf Coast to use whatever cash was available to pay for these improvements, and then when it came time to use earnings cash for interest and dividends, you could then get the cash from the Missouri Pacific and delay that advance until that date and reduce the interest charges which the N. O. T. & M. had to pay. Now, that is basically what was going on here, and that is why, in this Exhibit No. 32, it looks as if the advances were being made for the payment of dividends. Actually, those were simply delayed advances for the financing of improvements, and the delay was due to the desire to save interest charges to the N. O. T. & M. and make it as economical as possible for them to carry out this improvement program.

The Court: Announce a recess.

At this point, 12:30 P. M., a recess was had until 2:00 P. M.

(Pursuant to recess at 2 o'clock p. m. March 20, 1945, the further following proceedings were had:)

WILLIAM WYER,

having been heretofore duly sworn, upon resuming the stand, testified further on behalf of the Group as follows:

Direct Examination (Continued)

By Mr. McConaughy:

Q. At the recess you were discussing Group Exhibit 32. Do you have anything more to say about that?

A. Just a little bit. I think there is one minor error on that exhibit which ought to be pointed out. In the first column opposite the—

Q. (By the Court) First column of what, Mr. Wyer?

A. Of exhibit 32.

Q. All right.

A. It is just a couple of letters that were left out inadvertently; opposite the date January 3, 1933, down near the bottom, the figure $79,000 appears and there should be the letters CR, credit, CR for credit, to the right of that. In other words, that item showed repayment and it should be so designated. I think that is all I had on that exhibit.

Now, my next exhibit discussed somewhat more in detail these investments in road and equipment on the Gulf Coast Lines. I talked about them in total so far, but my next exhibit attempts to analyze that expenditure and show—first, prove the figure and then show what it was for.

Q. (By Mr. McConaughy) Is this the exhibit, Mr. Wyer? A. This is.

The Court: Have I got that here?

A. Yes, it follows No. 32 in your set.

Q. All right.

Mr. McConaughy: I offer that in evidence.

(Said paper was thereupon marked by the Reporter as Group Exhibit 33 for identification.) [See Vol. of Exs. p. 283.]

Mr. McConaughy: That is marked Group Exhbit 33.

Q. All right.

A. I have pointed out in connection with the previous exhibit that down through the date of the last dividend the improvements have totalled $7,417,593. and this exhibit shows how that figure is arrived at, from the books of the Gulf Coast Lines. The first two lines show the investment on January 1, 1928, and the investment on January 30, 1931. That should read 1931. I don't know whether that has been corrected.

The Court: Investment on November 30, 1931.

A. 1931, and the difference between those two figures is $7,436,690. Then, there was also an increase of $578,561 in other investments. Those are not investments in physical property, and the detail of that is shown in footnote No. 2, on this exhibit.

Now, then, of this total of $8,015,251, $727,658 had been in effect anticipated in order to support the series D bonds that were sold in February, 1928, so that that amount has to be deducted because to that extent these expenditures were not capitalizable; in other words, $727,000 of these expenditures had been in effect promised to be made out of the money secured from the sale of the Series D bonds, so we can't obviously use that amount over again in supporting new capitalization.

Then, there is the small item of $130,000 of the Series D bonds which we didn't sell; in other words, there was that many more authorized than were actually sold, and expenditures were credited against that, so that that $130,000 is available to be added to the total of capitalizable assets up to November 30, 1931. That is shown just to prove the figure of $7,417,593, representing the capitalizable investments that have not otherwise been capitalized up through the end of the dividend period.

Now, my next exhibit is a detail by classes of the larger items entering into this expenditure of money.

Q. (By Mr. McConaughy) Is that the exhibit, Mr. Wyer? A. Yes, it is.

Mr. McConaughy: I offer it in evidence.

(Said paper was thereupon marked by the Reporter as Group's Exhibit No. 34 for identification.) [See Vol. of Exs. p. 284.]

Mr. McConaughy: That is marked Group Exhibit 34.

Q. All right, Mr. Wyer.

A. Now, this exhibit 34 is the next sheet in that set and that takes the major items; that is, the items that amounted to $5,000 or more and classifies them as to the character of the expenditure. In the case of expenditures of new lines, it shows just what the new lines was, and the amount of money spent, and then below that it shows the character of the expenditure down through all of the various classifications of additions and betterments.

The interesting thing to note here is that over 2¼ million dollars was spent for expenditures of lines or for new tracks or new facilities; in other words, a very substantial part of this amount was for facilities to enable the Gulf Coast Line to expand its business. Then, you have other items such as new ballast, $739,000; new tie plates, rail anchors and other track material, $352,000; new shop facilities, $402,000. They are nearly all self-explanatory as to what they are, but they were all part of this program of developing the Missouri Pacific System and making it a better service institution. This exhibit is simply put in to show what we mean when we talk about improvements in the property, the kind of things that this money that came from the Missouri Pacific was spent for. Of course, there is also a multitude of small items under $5,000 which I haven't attempted to classify, but I just analyzed the major items because they give a picture of the general character of the work.

Now, my next exhibit goes even further and takes these same items shown on Exhibit 34, and gives some explanation as to why they were necessary.

Q. Is this document consisting of 8 sheets, the exhibit to which your refer? A. Yes.

Mr. McConaughy: I offer it in evidence.

Mr. Biggs: Just a minute. With regard to this exhibit where did you get these statements? I am not talking about the amounts at the outside, but these statements in

regard to estimates of revenue and things of that kind. Where did that information come from?

A. These statements are all abstracted from the material which was presented to the board of directors of the New Orleans, Texas & Mexico Railway Company, when they authorized the expenditure of this money, and the statements were made to the board by Mr. Baldwin, the president of the New Orleans, Texas & Mexico.

Mr. Biggs: If your Honor please, I think those statements are the best evidence. I would like to call for them, and object to the introduction of this exhibit.

Mr. McConaughy: Can't we do this, Mr. Biggs?

Q. Do you know whether those statements are in St. Louis, Mr. Wyer? A. I think they are.

Mr. McConaughy: May we do this, Mr. Biggs, as we did with you frequently?

Mr. Biggs: Yes.

Mr. McConaughy: Let this go in subject to your objection, and subject to your check, and we will produce the originals from which these were abstracted, and if you find any of them wrong, we will make the correction.

Mr. Biggs: That will be satisfactory.

Mr. McConaughy: I offer it in evidence subject to the objection.

(Said paper was thereupon marked by the Reporter as Group's Exhibit 35, for identification.) [See Vol. of Exs. p. 285.]

The Witness: I think this exhibit speaks for itself. It doesn't require any detailed comment. It simply shows the reasons that prompted the expenditures of these amounts of money.

Mr. McConaughy: That last exhibit is marked Group's 35.

Q. Mr. Wyer, were the additions and betterments made on the properties of all the Gulf Coast Lines Companies between January 1, 1928, and November 39, 1931, reported in detail to the Interstate Commerce Commission?

A. Yes, they were.

Q. Will you explain how and why this was done, and the result which followed?

A. I have already mentioned that in connection with the Missouri Pacific financing we sometimes furnished detailed statements of improvements in advance so that the Commission would have a chance to check them over. In the same way detailed statements of all of these improvements of the NOTM were furnished to the Commission, although I think not in advance of the application, I think they were furnished in this case contemporaneously with the application to issue securities. I might mention that this application to the Commission is very voluminous. When you submitted anything to the Interstate Commerce Commission it generally took a big box to support it, so that very great detail was furnished with all these projects, but to summarize the submission, all of the improvements made on the Gulf Coast Line from January 1, 1928, to March 31, 1929, were made in what is known as Finance Docket 7786. That was an application by the NOTM to issue and pledge $1,955,000 of first mortgage Series D bonds, and those bonds were later pledged to Missouri Pacific as part of the security for these advances, and the Commission approved that issue and pledge on the basis in part of the submission of the detail of these improvements.

Q. (By Mr. Biggs) Just a minute, Mr. Wyer, what was the number of that Finance Docket?

A. 7786. Then, the improvements from April 1, 1929, to August 31, 1931, were submitted in Finance Docket 9102, which was a Missouri Pacific application for authority to issue and pledge $35,000,000 of the Series I First and Refunding Bonds. The reason that those were submitted in support of a Missouri Pacific application was because Missouri Pacific had advanced money to pay for these improvements, and the advance to the NOTM was considered a capitalizable asset of the Missouri Pacific by reason of these improvements have been made on the subsidiary line. So the detail of the improvements on the Gulf Coast Lines was submitted in support of the Missouri Pacific application to issue securities, and the security issue was approved by the Interstate Commerce Commission.

Then, the detail of the improvements from September 1, 1931, to December 31, 1934, was submitted in reorganization proceedings in the same form as the earlier submission and it is covered in Exhibits 117 and 118 in the reorganization hearings before the Commission.

I have an exhibit which summarizes that and the detail of those three submissions.

Q. (By Mr. McConaughy) Is that the exhibit, Mr. Wyer? A. Yes, it is.

Mr. McConaughy: I offer it in evidence.

(Said paper was thereupon marked by the Reporter as Group Exhibit No. 36 for identification.) [See Vol. of Exs. p. 295.]

A. I don't think the exhibit requires any discussion. I have explained practically everything that shows on it.

Q. Mr. Wyer, do you consider that the advances by the Missouri Pacific to the NOTM after December 1, 1931, were of value to the NOTM stockholders? A. Yes, I do.

Q. Will you please explain that answer?

A. Of course, as I have explained, the advances after December 1, 1931, were after the discontinuance of dividends, and at that time the Gulf Coast Lines were not earning their interest charges, so that in addition to paying for such improvements as were required on the property, these advances met the deficits, and paid the interest and taxes, and without those advances there would have been simply more defaulted interest and a bigger claim ahead of the NOTM stockholders in the reorganization, so I feel that they got the benefit of those advances, even though they didn't go to improvement in the property.

Q. Will you please state, as far as you know, the reasons underlying the dividend policy of the NOTM, supporting your explanation of the facts concerning the NOTM's situation between 1916 and 1931?

Mr. Biggs: Just a moment, if your Honor please, the witness has testified he had no connection with the NOTM up to 1929. Is that correct, Mr. Wyer? A. Yes.

The Court: He was an officer from that time on. He necessarily became familiar with the policy. Objection overruled.

Q. (By Mr. McConaughy) That is correct, isn't it, Mr. Wyer? A. Yes, that is correct.

The Court: He has already testified to it.

The Witness: Yes, sir, I have some four exhibits which I think show what was happening in the Gulf Coast Lines during this period. The first of these is a statement of the gross additions and betterments on the Gulf Coast Lines properties from 1916 to 1931.

Mr. McConaughy: Is this the Exhibit to which you refer, Mr. Wyer? A. Yes.

Mr. McConaughy: I offer it in evidence.

(Said paper was thereupon marked by the Reporter as Group's Exhibit No. 37 for identification.) [See Vol. of Exs. p. 297.]

Mr. McConaughy: It is marked Group's Exhibit 37.

Q. All right, proceed.

A. This shows by years the improvements made on the individual Gulf Coast Lines Companies during this entire period.

Now, this exhibit starts on March 1, 1916, because that was the first day of the existence of the reorganized New Orleans, Texas & Mexico Railway Company. You will notice here that, just by the totals at the bottom of the page, that the heavy expenditures for improvements on the Gulf Coast Lines didn't start until 1925. Notice in 1925, a total of $4,070,050 was spent on the Gulf Coast Lines, which was much more than any previous year, nearly three times the amount spent in 1924, and the only year approaching it is 1921, when $2,844,000 was spent.

Of course, that ties in directly to the fact the Missouri Pacific officers took office on the Gulf Coast Lines January 7, 1925. You will notice in 1926, '27, '28, and '29, very heavy expenditures continued, and $2,029,000 in 1930. Those again were the same years when the big improvement program was going on on the Missouri Pacific property; in other words, this was the manifestation of the Baldwin improvement program as it affected the Gulf Coast Lines.

Now, on the right hand column you will note the totals for the individual companies, and the largest one, as might be expected, is the St. Louis, Brownsville & Mexico, a little over $15,000,000. The New Orleans, Texas & Mexico, over $8,000,000, of which a substantial amount was equipment, and much smaller amounts for the other companies.

There again you see that the Brownsville, which constituted about a third of the mileage, got nearly half of the improvement money, that being the important main stem from the Valley up to Houston.

Some of the companies, of course, don't show any improvement in earlier years. This simply represents improvements put on the properties after they became members of the Gulf Coast Line family, and we don't have the records for the earlier years, in some cases they weren't even in existence, they were built after the beginning of the period covered by this statement.

Now, the total during this period is $32,000,000, and a great part of that, about $22,000,000 out of the $32,000,000 was spent in the years 1925 to 1930, inclusive, and that was a very important factor in the minds of the directors of the NOTM in setting up this dividend policy and maintaining the dividend, because they had in mind that with this expenditure of $22,000,000 in those six years the Gulf Coast Lines were going to be put in a position to gradually increase their business and improve their earnings, and they felt that under those circumstances that was a factor justifying maintenance of the regular 7% dividends which had been started before the Missouri Pacific took control, and this is one of the factors that was in their minds in carrying out that policy.

Now, my next exhibit—

Mr. Biggs: If your Honor please, I move that be stricken out, that evidence, which he supposed was in the minds of the directors.

The Court: Overruled.

The Witness: My next exhibit is consolidated income account for all the Gulf Coast Lines covering the period 1916 to 1943.

Q. (By Mr. McConaughy) Is that the exhibit to which you refer? A. Yes.

Mr. McConaughy: I offer it in evidence.

The Court: That includes all of the companies?

A. This includes all of the 15 companies.

(Said paper was thereupon marked by the Reporter as Group Exhibit No. 38 for identification.) [See Vol. of Exs. p. 299.]

The Witness: Now, this shows that in 1925, the first year of Missouri Pacific control, the net income after payment of fixed charges was $2,547,000. That is the last figure in the 1925 column.

And then, as you move to the left you see what the net income was for later years. Now, keeping mind that the annual dividend requirement was about $1,038,000, so that in the first year of Missouri Pacific operation that was well covered, and also in the second year, 1926. Then, 1927 was the year of the Mississippi River floods and a deficit was shown in that year. That situation, of course, was considered non-recurring and it was not felt that it was necessary to break the dividend policy because of that event.

Then, 1928, the consolidated income came back nearly to $1,000,000. It wasn't until 1931 that there was a serious failure to earn the dividend in each year, after the flood and these are the earning figures that the Board always looked at when they were considering dividends. They left to the lawyers the protection of the situation on the point of view of the New Orleans, Texas & Mexico Railway Company proper, as a separate corporation, but the broad pictures that the directors were always looking at was what is this consolidated group of companies earning, because they simply looked at it as one group, with the NOTM being simply the parent company, owning all of the securities of the subsidiaries, and the overall performance of the whole was what governed the directors in acting on dividends, so that these earnings were another factor, as well as the big improvement program which was under way and which was expected to make these earnings greater in the future.

Now, it is very interesting to note that in 1942, you have a real demonstration of what the improvement program enabled the Gulf Coast Lines to do when they were faced with the tremendous volume of business which they had to handle in those years. They were able to handle this business and able to show tremendous earnings. In 1942, there was net income of $6,146,000, and in 1943, net income after all charges of $2,559,000, and you will observe in 1943, that that income of $2,500,000 was after paying over $14,000,000 in taxes.

In other words, the taxes alone of the Gulf Coast Lines in 1943 were more than its entire operating revenues from 1931 to 1936, inclusive, and more than any entire operating revenues in any one of those six years. It was enabled to pay those taxes and still show $2,500,000 net. That shows that the improvement program on the Gulf Coast Lines enabled this property to produce very large earnings when the business finally came back and also enabled it to handle the business, which it might never have been able to handle without the improvements.

Now, I have another exhibit showing the same figures for 1944.

Mr. McConaughy: Is this the exhibit, Mr. Wyer? A. Yes.

Mr. McConaughy: I offer it in evidence.

(Said paper was thereupon marked by the Reporter for identification as Group Exhibit No. 39.) [See Vol. of Exs. p. 300.]

Mr. McConaughy: Go ahead, Mr. Wyer.

A. This is in a separate exhibit because we didn't get the figures in time to include them with exhibit 38, and speaks for itself. You will note that the net income after all charges was over $4,000,000, and the taxes paid were over $12,500,000.

Now, my next exhibit is a summary of some of the important facts concerning the financial condition of the Gulf Coast Lines as a whole during the period from 1916, to 1931.

Q. Is that the exhibit, Mr. Wyer? A. Yes.

Mr. McConaughy: I offer that in evidence.

(Said paper was thereupon marked by the Reporter for identification as Group's Exhibit No. 40 for identification.) [See Vol. of Exs. p. 301.]

The Witness: This shows in the first line the total railway operating revenues each year so that you can get an idea of the volume of business done, and the second group of figures show the additions and betterment gross each year, and that checks in total with Exhibit 37. Then the third group of figures is rather interesting. That shows the percentage which the additions and betterments constituted each year of the gross revenues, and you will note that up until 1925, with two exceptions, the improvements never constituted more than ten per cent of the gross revenues, and up to the end of 1924 they had averaged nine and a half per cent, less than ten per cent.

Now, in 1925, when the Baldwin improvement program started, the percentages are shown there, twenty-five per cent in 1925, nearly seventeen per cent in 1926, and nearly thirty-two per cent in 1927, over fourteen per cent in 1928, twenty per cent in 1929, and nearly eleven per cent in 1930. The difference, of course is quite marked, showing that even though these lines were earning more gross revenue, doing more business during that period, they were also spending a very much larger proportion of their total revenues in improvement. Of course, when you get to the point where you are spending twenty-five and thirty per cent of your operating revenues in improvements, obviously that can't be financed out of earnings, even if you don't pay any dividends at all, you would have to finance that very substantially from outside capital, and this shows the relation of the Gulf Coast Line improvement program to its total revenues, and shows why outside financing was required.

Now, the fourth group of figures shows the net income each year and the cumulative net income, and the last group of figures shows the dividends each year and the cumulative dividends. An interesting fact is that at the end of 1931, at the end of the dividend period, the Consolidated Gulf Coast Line companies had earned, available

for dividends, $15,986,390.00. That is in the 1931 column, the third figure from the bottom, and they had paid out in dividends $13,646,191.00, so that they still had a margin of about $1,340,000.00 that they had earned on a consolidated basis, taking all of the companies together, over and above the dividends paid out.

Now, that money had, of course, gone into the property, so that also was a factor; these figures were, of course, known to the directors from time to time as the performance developed, and that was a factor in the dividend policy.

Now, another important factor in their minds was the fact that this very improvement program under Interstate Commerce accounting regulations, carried with it a very large charge to operating expenses each year in connection with these improvements, and my next exhibit shows what these charges were.

Q. (By Mr. McConaughy) Is this the exhibit to which you refer? A. It is.

Mr. McConaughy: I offer it in evidence.

(Said paper was thereupon marked by the reporter as Group's Exhibit 41, for identification.) [See Vol. of Exs. p. 303.]

The Witness: Now, this represents the charges to operating expenses in each year which were incurred in connection with the improvement program, and there are some averages at the bottom of this exhibit which are significant. During the six years 1925 to 1930, the average charges to operation each year in connection with this program were $511,923.00. After the program stopped, these amounts fell during the nine years, 1931 to 1939, inclusive, to an average of only $183,715.00, or only a little over one-third of what they were during the improvement program.

Now, this was a definite factor, because by reason of this situation it was known that the earnings of the Gulf Coast Lines were reduced to an unusual extent by reason of these heavy operating expense charges during these six years; in other words, over three million dollars during

these six years was charged to operating expenses in connection with this improvement program, and if you took this into consideration, therefore, it meant that the earnings of the Gulf Coast Lines were decreased temporarily by reason of these heavy charges to operating expenses, while the improvement program was going on, and this was another reason why it seemed proper to keep the dividends up to a large percentage of the earnings, because it was felt that during this period the earnings were being reduced by extraordinary circumstances, and the fact that these charges fell from an average of $511,000.00 to an average of $183,000.00 when the program ended, shows the extent to which this affected the income abnormally during the six year period.

This, therefore, was another factor which the directors had in mind in feeling that they could safely declare dividends to the extent that they did. Of course, another factor which the directors had to consider in connection with dividend policy was the fact that the Missouri Pacific owned ninety-three per cent of this stock, and there was a small minority interest outstanding, and the directors felt that they had to bend over backwards not to do anything to prejudice the interests of that minority stock, and I think that was another reason undoubtedly that they were loath to cut the dividends unless they were sure it had to be cut, because of this minority interest that they felt they had to protect.

Now, there is another factor which I think entered into their minds, and that is the fact that beginning in 1926, December 1st, 1926, the most of the stock which the Missouri Pacific owned in the N. O. T. M. was pledged under the secured serial 5¼ per cent bonds of the Missouri Pacific, and it was always felt that these dividends received from the N. O. T. M. were in a sense the income out of which the interest on those 5¼ per cent bonds was paid, and I have an exhibit which shows the amount of interest on those bonds and the amount of dividends received on the stock.

Q. Is this the exhibit to which you refer? A. Yes, it is.

Mr. McConaughy: I offer it in evidence.

(Said paper was thereupon marked by the reporter as Group Exhibit 42.) [See Vol. of Exs. p. 304.]

Q. (By Mr. McConaughy) Proceed.

A. I think this exhibit speaks for itself. The interest on the secured serial 5¼ paid during this period totaled $4,076,774., and the dividends received from the N. O. T. M. during this period totaled $4,624,580., so that the dividends received on the N. O. T. M. stock after December 1st, 1926, did very little more than cover the—

Q. I think you might repeat that, Mr. Wyer.

A. The total of column 2, of $4,076,774. represents the total interest paid by the Missouri Pacific on its 5¼ per cent. bonds under which the N. O. T. M. stock was pledged, and the total of column 4, of $4,624,580. represents the total dividends on pledged stock received by the Missouri Pacific from the N. O. T. M. during this same period, so that the dividends did very little more than simply meet the interest charges on the bonds that the Missouri Pacific had to issue in order to raise the funds to buy the stocks, and very little of the dividends went to other purposes of the Missouri Pacific.

In addition to the amount shown on this exhibit, the Missouri Pacific also paid off $1,016,000 of principal amount of these 5¼ per cent bonds during the same period.

I think that covers the principal factors, as far as I knew them, that were in the minds of the directors in connection with the N. O. T. M. dividend policy.

Mr. Biggs: If your Honor please, now, this witness is finished, and I move that all evidence as to what was in the minds of the directors of the Missouri Pacific in regard to the payment of these dividends be stricken from the record.

The Court: Overruled.

The Witness: I might add that I was a director of the N. O. T. M. during part of this period.

Q. (By Mr. McConaughy) Will you tell us what period, during what period were you a director of the N. O. T. M.?

A. I was a director for parts of 1929 and 1930, I don't

remember just which months, but I was for several months in one or both of those two years.

Mr. Biggs: This evidence covers a much longer period than the period of his directorship.

Q. (By Mr. McConaughy) You have had access, have you not, Mr. Wyer, to the material which was available to the directors when they considered the action taken here?

A. It was [party] of my duty to prepare that material from February, 1929, on.

Q. And did you sit in on some of these directors' meetings?

A. I attended all of them unless I happened to be out for some special reason, but it was part of my regular duties to attend all directors meetings of the N. O. T. M.

Q. You have read Comstock's Exhibit 84-A and B, that is two sheets of the same exhibit which Mr. Biggs read into the record yesterday, a letter from Mr. Safford to Mr. Baldwin in connection with the 1931 prospective net income of the G. C. L.? A. Yes, I have.

Q. As a railroad executive, what does that letter mean to you?

A. Well, I might say this, that to my mind, one of the severest tests of the ability of a railroad executive comes at the time when business is decreasing, especially when it is decreasing rapidly, and that letter to me means simply this, that Mr. Safford, whom I certainly considered was a good railroad executive, was obviously studying his situation very closely to see just how far he could go in reducing expenses in order to meet the heavy decreases in traffic, and at the same time he wasn't willing to go any further than was necessary for the support of operation of the properties which were under his charge. I have seen dozens of letters on that general subject. It is a well known phenomenon in the railroad business, when your business falls off you have to cut expenditures, and that is simply the type of letter that any good railroad executive would write under those circumstances.

Q. Now, then, there has been a lot of testimony here about the family line bills. Will you explain to us these family line bills? I speak about the Gulf Coast Lines.

A. Yes, I understand. Well, of course, the family line bills go back basically to this situation that I tried to describe this morning, of the fifteen separate companies, many of them short branch lines, and the New Orleans, Texas & Mexico being the parent company, but having only eleven per cent of the mileage involved. Now, it obviously wasn't economical or efficient to set up separate executive departments for every one of these fifteen separate companies or for every one of the five original Gulf Coast Line companies to which the other ten were added as the years went by. You couldn't have a separate accounting department for each company or you couldn't have a separate purchasing department or you couldn't have a separate operating department, it would just be ridiculous to have separate departments for every one of these little companies, so there gradually grew up, and it was in effect when Missouri Pacific got control of the Gulf Coast Lines, a system whereby to the extent that it was economical and efficient to do so, all of the financial activities, the cash collections and payments of the companies were handled through a central clearing house. This clearing house was originally the New Orleans, Texas & Mexico, and also to a considerable extent, the St. Louis, Brownsville & Mexico, the one being the parent company, the other being the largest operating company, and the items that were covered through the clearing house, embraced, I would almost say, the great majority of the items that are handled in day to day financial transactions on a railroad; for example, all of the interline freight revenue was collected and cleared through the N. O. T. M. The N. O. T. M. handled settlements for all of the Gulf Coast Lines with the foreign railroads, and then would divide up the amounts received or the amounts which had to be remitted between the fifteen companies; in other words, it would do the clearing with Missouri Pacific or with the Pennsylvania Railroad or any other connecting line, and then would divide the net amount of the settlement among the fifteen companies.

Now, of course, this didn't start up all at once, it grew up, and as companies were added, they were gradually added into this [wet-up,] so that you can't say that a

particular situation existed at a particular date without going back to that date, because the expense of the system varied from time to time as lines were taken into the clearing house, but these items were handled in whole or in part in this way during all or a great part of the period under discussion here.

In addition to freight revenue, the collection of passenger revenue was handled in this way, and also the collection of mail revenue from the U. S. Government, and the collection of express revenue from the Express Company. Purchases of rail, ties, lumber and other maintenance of way material was handled in this way, and to a considerable extent the maintenance of way labor, especially any extra gangs or floating gangs was handled in this way.

In other words, it wouldn't be economical for these small companies to maintain a large extra gang of maintenance-of-way laborers. Such a gang would be maintained by the N. O. T. M. and would be used in the territory east of Houston, and such a gang or gangs would be maintained by the Brownsville and be used in the area west of Houston. And Brownsville would pay these men and then in turn would bill the other companies on whose line these men might work.

Repairs to system equipment, especially the heavy backshop repairs, were made in the shops at Kingsville, and many of those repairs were paid for initially by the Brownsville and billed to other companies. Foreign line bills for repair of freight cars were handled in this way, and lumber for maintenance of equipment were purchased through a central purchasing agency, fuel oil used in locomotives was purchased centrally, and to some extent the train crews were paid for by one company and other companies were billed when these crews operated trains on the small lines.

Loss and damage claims in connection with freight movements were handled in this way, and all of the departmental offices, such as the operating department offices, or accounting department offices, treasurer offices, engineering offices, real estate, tax and purchasing department and the traffic department and the executive department, were all handled as a centralized staff of officers, and the

expense of those officers and their departments were distributed over the fifteen companies, and the collection of per diem on freight cars and mileage for tank cars and refrigerator cars was all handled through a central clearing house.

Well, you can see from that that a great multiplicity of bills arose between these different companies, the N. O. T. M. and the Brownsville, especially would continually have heavy bills against the subsidiaries and there would be charges back and forth between all of the companies.

Now, that brought about this net result. Let's take a little subsidiary like the New Iberia & Northern, a small branch line in Louisiana. That is the little branch line that reaches the main line at Port Barre. Now, in that way the New Iberia & Northern would get credit for all of its revenue and would get charged either by paying it directly or through these bills for all of its expenses, but the New Iberia & Northern was also performing additions and betterment work on its property at the same time that these operations were being handled this way or the N. O. T. M. was performing it for it, and would later bill it for it, so the net result was that since N. O. T. M. was handling all of the receipts and disbursements of the New Iberia & Northern, any net difference between those receipts and disbursements would ultimately have to be carried by the N. O. T. M., because the New Iberia & Northern had no source of funds other than the funds which came to it through these clearing house transactions, so that assuming that the New Iberia & Northern operated on an even break and earned its operating expenses, which it didn't always do, there still was the question of improvement on the property of the New Iberia and Northern, and from the point of view of cash transactions, since the New Iberia & Northern didn't have any source of outside funds and didn't do any financing, the extent to which its outgo exceeded its income over the years, gradually built up a balance which was due to the New Orleans, Texas & Mexico.

Now, you can't say in the nature of the transaction that that balance represented anything in particular, it simply represented the difference between the outgo chargeable to

the New Iberia & Northern, and the income which was creditable to the New Iberia & Northern, and in the final analysis, that difference represented any operating deficit plus any capital expenditures made on the property of the New Iberia & Northern.

Now, it was quite true that these bills were rendered and they represented specific things, but it didn't make any difference to the N. O. T. M. when the New Iberia & Northern got money which bill was paid, they were going to get all the money the New Iberia & Northern had, anyway, and it made no difference to the N. O. T. M. whether you picked out Bill 672 or Bill 811 and paid it, the N. O. T. M. got all there was; there wasn't any more; and there remained a balance due.

Now, the same situation was true with respect to all of these subsidiaries, and the big factor, the big factor in these growing balances in the family line bills was the fact that additions and betterments were being made on the properties of these fourteen subsidiaries and somebody had to pay for them, and in effect they were paid through this gradually accumulating total of family line bills.

Now, that is what they really represent. I have shown how they developed, but the reason that they never were paid and that the unpaid balance kept increasing all the time was that improvements were constantly being made to the properties of these companies. The subsidiaries had no means of financing those improvements. Consequently they kept owing more and more money to the parent company which did have the means of financing the improvements. So you have this chain reaching down into the subsidiaries of the Gulf Coast Line.

I have shown how at the start the Missouri Pacific financed this improvement through short term borrowings, but ultimately sold bonds. Then the N. O. T. M.'s next step down was financing those improvements through advances from the Missouri Pacific and then clearing those up with the sale of bonds. Then the subsidiaries of the N. O. T. M. had their improvement program, and those improvements were financed through the accumulation of these unpaid family line bills, and you were then down to the bottom of the scale, there wasn't any place further

to go. Those subsidiaries had no means of financing their improvements so the family line bills were simply accumulated as an unpaid balance and the N. O. T. M., the parent company's financing, had to take care of the improvement on the subsidiaries, so that when the Missouri Pacific was advancing money to the N. O. T. M. for improvements on the Gulf Coast Line it was really financing improvements on these subsidiaries and giving the N. O. T. M. the money so that it could pay for these improvements, and the amounts owing from the subsidiaries remained on the books as family line bills.

Now, the biggest family line bill item was on, of course, the St. Louis, Brownsville & Mexico, because that was the biggest subsidiary, and in 1933 the family line account on the Brownsville was over ten million dollars, and I have an exhibit which shows how that ties into the improvements made on the St. Louis, Brownsville & Mexico.

The Court: We will take a short recess.

(Brief recess.)

Q. All right, go ahead, Mr. Wyer.

A. I was talking about the family lines' bills, and the fact that the largest amount owing to the N. O. T. & M. under that heading was owed by the St. Louis, Brownsville and Mexico, which, of course, would be a natural expectation, and that in 1933 this company owed over ten million dollars to the parent company under this heading.

I have an exhibit which is an analysis of the balance sheets of the St. Louis, Brownsville and Mexico for the years 1924 to 1931, inclusive, which I think sheds light on the reasons for the growth and existence of the family lines' bills.

Q. Is this (indicating) the exhibit to which you refer, Mr. Wyer? A. Yes, it is.

Mr. McConaughy: I offer that exhibit in evidence, marked Group Exhibit No. 43.

(The said document was marked by the reporter as Group Exhibit No. 43.) [See Vol. of Exs. p. 305.]

Q. All right.

A. This exhibit shows in the first block of figures the investments of the Brownsville, which are almost entirely investments in physical property, from which have been deducted the depreciation carried on the books of the Brownsville, leaving a net figure for the investment less the depreciation, and then that takes the first three lines, and after that we have four more lines of figures showing the other assets of the Brownsville, current assets, deferred assets, and unadjusted debits, but excluding any inter-company items. Then we have five more lines that show the liabilities of the Brownsville, excluding dividends matured, unpaid, and inter-company items, and long term debt. And about nearly one-half the way down page, we have the net excess assets over liabilities.

Now, that is the assets of the Brownsville as carried on the books each year which it had available to cover its long term debt and the amount of money that it owed to the parent company under these family lines' bills. Of course, the principal factor in that net excess of assets over liabilities is the investments in physical property, the first line on the exhibit, and of course, as these improvements are made, that is where they become investments, is in that first line, and then in this net excess assets over liabilities. So the purpose of this exhibit is to show how the growth in net excess of assets compares with the growth of the family lines' bills.

And the next line after the net excess of assets is the long term debt, including equipment trusts outstanding at the end of each year, and then we deduct that from the excess of assets and we have the assets available to support the inter-company debt.

Then the next block of figures shows the inter-company debt, and that is the amount which is owed to the parent company each year, except that we have excluded the $1,400,000 of Brownsville dividends that they declared and never paid.

The Court: $1,100,000, isn't it?

A. One million, one, is here, because that was paid in the following year, so we figured that was a good item, because they paid it after the end of the year, but the one million, four, which they never did pay, and which was finally reversed, we have excluded.

And you will note at the end of 1931, the inter-company debt on this basis is $10,138,000, and deducting that from the net assets leaves $2,721,000 to support the stock. And the stock was only $500,000, so that you had a surplus at the end of 1931 on the St. Louis, Brownsville and Mexico of $2,221,000. That plus the stock representing the equity over and above all debt and other liabilities.

Now, an interesting thing, most interesting thing in this exhibit is found in the last two blocks of figures. The next to the last block shows increase in the net investment each year, and the last block shows the increase in debt each year.

Now, of course, the principal factor in the increase in debt is the amount of family lines' bills owed to the parent company, N. O. T. & M. You will note that each year the debt increased almost at the same rate, but up until 1931 the increase in net investments was also a little greater than the increase in debt.

At the end of 1930, the Brownsville's increase in net investments was $11,776,000, and the increase in debt, including what it owed the parent company, only $9,010,377. At the end of 1931, the situation had reversed to the extent of about $142,000, the increase in net investments being $11,521,000, and the increase in debt $11,663,000.

Now, of course, toward the end of 1931, the Brownsville was running into deficits, operating deficits, and that is the reason why the switch was made, because the debt was increasing because of these deficits. But this exhibit shows especially that the increase in debt to the parent company throughout these years was more than offset by an increase in the physical assets of the Brownsville, and this is the exhibit, therefore, that shows in effect the same pattern of financing improvements on the Brownsville that we had on the N. O. T. & M., where the Missouri Pacific loaned the N. O. T. & M. money to finance Gulf Coast improvements, N. O. T. & M. eventually sold bonds and refunded it, and the N. O. T. & M. in turn had to loan money to the Brownsville to finance its improvements, but the Brownsville never sold bonds to pay it back. Now, as a matter of fact, the Brownsville could have, because the N. O. T. & M. mortgage would have permitted—the Brownsville mortgage would have permitted additional

bonds to be issued and delivered to the N. O. T. & M., but there was no point doing that, and it would have just been a useless paper transaction, and the debt from the Brownsville was just as well represented by these family lines' bills as if the bonds had been issued; but this is the third step in the pattern of financing down the line.

Now, I have a similar exhibit covering the situation of the Beaumont, Sour Lake and Western.

Q. Is this (indicating) the exhibit to which you refer?

A. Yes.

Mr. McConaughy: I offer that in evidence, marked Group Exhibit No. 44.

(The said document was marked by the reporter as Group Exhibit No. 44.) [See Vol. of Exs. p. 307.]

Q. All right, Mr. Wyer.

A. This is exactly the same pattern as the exhibit of the Brownsville, and I have done it for the Beaumont because it was the only other road for which detail balance sheets were given in the Comstock evidence, and this shows somewhat the same picture, except that, on account of more deficits on the Beaumont, the increase in debt is more, generally speaking, than the increase in assets to support it.

At the end of 1931, the increase in debt was $2,220,000, and the increase in net investments only $1,430,000. That, of course, however, is a much smaller property than the Brownsville.

Now, there is another—there was also, of course, a good deal of discussion of these dividends declared by the Brownsville, about which I would like to say a little. I have shown that the Brownsville has about one-third of the mileage, but the importance of the Brownsville in the Gulf Coast Lines System is even greater than the mileage would indicate, and I have a few figures here that are not in an exhibit, but they illustrate that importance very markedly.

In 1925, the amount available for interest on the Brownsville was 53.6 per cent of the total amount available for interest of all the Gulf Coast Line Companies. In other

words, though the Brownsville only had about a third of the mileage, it had 53.6 per cent of the total amount available for interest; and the corresponding percentages for the other years down through 1931 are as follows:

1926 ..... 65.2%
1927 ..... 90.5%
1928 ..... 61.5%
1929 ..... 61 %
1930 ..... 73 %; and
1931 ..... 84 %.

So the Brownsville's net earnings standard is pretty near the whole cheese in the Gulf Coast Lines' picture; so that when you are considering the Gulf Coast Lines from a consolidated point of view, as everybody does, the Brownsville is bound to be the important cog, and being a subsidiary, it has to declare dividends to the N. O. T. & M., in order for the N. O. T. & M. to come anywhere near reflecting in its own earnings the earnings of the consolidated company, although in this picture it is natural to expect the Brownsville to declare and pay its earnings out in dividends. It is really the main [illegible]em of the system, and it has to, in order to let the sy[illegible]m survive.

Now, I have an exhibit analyzing the profit and loss account of the Brownsville during these dividend years of 1925 to 1931.

Q. Is this (indicating) the exhibit to which you refer, Mr. Wyer? A. Yes.

Mr. McConaughy: I offer that in evidence, marked Group Exhibit No. 45.

(The said document was marked by the reporter as Group Exhibit No. 45.) [See Vol. of Exs. p. 309.]

Q. All right, Mr. Wyer.

A. I think this exhibit is self-explanatory. The important line on it is the last line on the exhibit, which shows that even at the end of 1931, after declaring a dividend of $4,155,000 in that year, the Brownsville still had a surplus which it had not declared out in dividends of $831,392, and during the whole period from 1925 to

1931, inclusive, that is the amount of the earnings which it did not declare as dividends.

In spite of the large dividend in 1931, the Brownsville had not declared all these earnings during this 7-year period as dividends to the New Orleans, Texas and Mexico. That is the point to this exhibit.

Now, I also have an exhibit showing when the dividends were declared by the Brownsville and when they were paid.

Q. Is that (indicating) the exhibit to which you refer?

A. Yes.

Mr. McConaughy: I offer that in evidence, marked Gorup Exhibit No. 46.

(The said document was marked by the reporter as Group Exhibit No. 46.) [See Vol. of Exs. p. 311.]

The Witness: This is a very interesting exhibit, because of the testimony about the $4,155,000 dividend and the expectations concerning its payment, and the detail as to that dividend and its payment are shown at the bottom of the exhibit.

The date of the declaration of the three million and a half of that was July 11, 1931, the last date shown here, and in the third column on this Exhibit 46 is shown the dates that these dividends were finally paid, and then in the last column are shown the time that elapsed between the times the dividends were declared and the time they were paid.

I notice that the Brownsville record has never been that dividends were paid promptly after they were declared. Quite long times have elapsed as more or less a regular thing. You have, for example, dividend declared in 1926, not paid until 1928—a year and five months and six days later. In 1928, you had a lapse of two years.

The Court: About two years and a half.

The Witness: Two years, four months and twenty-five days after the dividend was declared before it was paid. And in 1930, dividends declared on June 19th were paid just exactly one year later. So that there never was any practice of paying these dividends promptly, and when a

dividend was declared July 11, 1931, there was no expectation on anybody's part that this dividend would be paid right away, and it was perfectly normal procedure for them to go over until the following year or even later, and I think that has a bearing upon whether this Brownsville dividend was properly carried in the income account of the New Orleans, Texas and Mexico, because I think the Interstate Commerce Commission classification said that if there was reasonable expectation of payment, they would be carried there, but they should not be if there was not, and this, I think, has a definite bearing on what the reasonable expectation might be. It simply shows past practice in the payment of these dividends.

I think that is about all on this.

Q. What is your next exhibit, Mr. Wyer?

A. Oh, yes. Then I have another exhibit on the Brownsville dividends.

Q. Is this (indicating) the exhibit to which you refer?

A. Yes.

Mr. McConaughy: I offer that in evidence, marked Group Exhibit No. 47.

(The said document was marked by the reporter as Group Exhibit No. 47.) [See Vol. of Exs. p. 312.]

The Witness: This is a statement of the net income of the Brownsville, by months, during the years 1930 to 1932, and I present it because it shows the information that the directors of the Brownsville had available at the time of the declaration of this dividend of three and a half million dollars. The dividend was declared in July, 1931—July 11, 1931. Now, at that time, the Brownsville directors had before them, of course, all of the earnings for 1930, and the earnings for the first five months of 1931, ending with May, but they did not, of course, know anything about the earnings subsequent to May, 1931.

Now, you will notice that up to the time that the Brownsville directors declared this dividend, there was no indication that the Brownsville was going to operate at a deficit. There had been one deficit in one month of 1930, and there had been one deficit in the first five months of 1931, but the Brownsville was still in the black and sub-

stantially in the black, and the Brownsville directors could not have told from any earnings figures that were before them up to that time that the Brownsville was going to produce a deficit. The deficit started in the very month in which the dividend was declared. Of course, the earnings for July were not available until toward the end of August or, say, about six weeks after the Brownsville directors declared that three and a half million dollar dividend.

Now, I have devoted a good deal of discussion to this question of family lines' bills and the Brownsville dividends, not because in my opinion they are very important in the case, but—

Mr. Biggs: (Interrupting) Just a minute. I move that statement be stricken out. Mr. Wyer is not counsel.

The Court: Sustained.

Q. Mr. Wyer, will you kindly summarize the N. O. T. & M. financial picture, as you have brought it out in your testimony, now?

A. Well, as I see this whole picture, the N. O. T. & M. was simply a part of the Missouri Pacific System which was being built up and expanded in a most unusual way and to a degree—

Mr. Biggs: (Interrupting) Just a minute. I move to strike out the words "unusual way".

The Court: Overruled.

Mr. Biggs: That is calling for a conclusion of the witness.

The Witness: And to a degree which required intensive financing with outside capital or new capital, and the policy which brought this about was one which called for financing from time to time through the establishment of short term loans and ultimately the sale of debt to repay those loans.

This same policy was used on the Missouri Pacific, the parent company, it was used on the N. O. T. & M., the subsidiary of the Missouri Pacific, N. O. T. & M. got its money through the advances made by Missouri Pacific, the

N. O. T. & M. in turn had to supply the money to carry out this program of improvement on its own subsidiaries, and it advanced that money through family lines' bills, and as they are advances from the Missouri Pacific to the N. O. T. & M., they were an important factor in building up the N. O. T. & M. in line with this policy, and it was simply one of several methods which could have been employed to do this, but it was the method which was employed under the circumstances.

Q. Does that complete your testimony, Mr. Wyer?
A. Yes.

Mr. McConaughy: Before we adjourn, just one second, please—that is all, Mr. Wyer, as far as I am concerned. Are you going to adjourn now, Your Honor?

The Court: I don't know. Do you want to go on now, Mr. Biggs?

Mr. Biggs: No. sir. Before adjourning, I would like to move that all of Mr. Wyer's testimony be stricken from the record, for the reason that it contains conclusions, arguments, statements that are not relevant to any possible issue before the Court, and it is so interspersed and intermingled with a few facts that are probably pertinent, that it is impossible to segregate the competent evidence from incompetent and irrelevant evidence, and for that reason I move that it all be stricken.

The Court: Before adjournment, I will overrule your motion.

(Here ensued a colloquy off the record, concerning further procedure.)

Mr. McDonald: If the Court please, I have been requested and am authorized by Allegheny Corporation to make a statement for the record with reference to the matter raised about Mr. Wyer's fee.

Our position is that we don't think that the affidavit of Mr. Peckham is capable of misunderstanding. It states on the first page that it purports to set forth with detail the expenses incurred, including those which have been paid directly by the Corporation, those which have heretofore

been incurred and paid, and those which have been incurred and are to be paid.

It sets forth in the second page that it seeks only to be reimbursed for expenses which it has incurred and has, for the most part, already paid, in an effort to achieve a plan of reorganization which would be fair to all parties.

It sets forth on the same page that it was suggested to Allegheny at the beginning of these negotiations that Allegheny underwrite the expenses, with the understanding that it would make appropriate application for reimbursement from the Debtor's estate, and then it sets forth on the third page that among the expenses which we have incurred are the fees of Mr. Wyer, of which we have paid $22,465.86, which also includes some expenses, I think.

The Witness: (Mr. Wyer) Yes.

Mr. McDonald: And that we owe the additional sum of $7,500, for which we are asking reimbursement.

If it were possible to misconstrue that, I would like to make it clear now, as I think it was made clear at the Brooklyn hearings, that Allegheny considers that an expenditure incurred, and that the mere fact that it has not been paid is more a coincident than anything else; we owe the money, and we have asked to be reimbursed for it.

Mr. Biggs: The point I raised is correct. You did not read that whole statement.

Mr. McDonald: No, I asked the Court—I mean, I am sure the Court will take judicial notice.

Mr. Biggs: Just stated $7,500 would be paid after the plan has been approved.

The Court: I want to say to you, Mr. Biggs, the Court may have a weakness about forcing you to go ahead the next morning (Thursday), but I want you to go ahead the next morning, if you can.

Mr. Biggs: I will go ahead if possible, Your Honor.

The Court: Very well.

At this point, 4:45 P. M., March 20, 1945, an adjournment was had until 10:00 A. M., March 21, 1945.

Met, pursuant to adjournment as above, on March 21, 1945, at ten o'clock A. M.

Appearances: Same as heretofore noted.

The Court: You may proceed with the Missouri Pacific hearing.

D. Rucker Rodgers,

having been heretofore duly sworn, upon resuming the stand testified as follows:

Further Cross Examination

By Mr. Biggs:

Q. Mr. Rodgers, when I was examining you—I think it was on Monday—I asked you to find out certain information for me: Have you found that out? A. Yes.

(Here ensued private colloquy between Mr. Biggs and Mr. McConaughy.)

Q. In your exhibit, Mr. Rodgers, it shows that there were 120 freight cars purchased during 1929? A. Yes.

Q. I asked you whether those cars were all actually purchased in 1929, or had been ordered prior to that date and only delivered in 1929.

A. They were built in the company shops at Kingsville in 1929. They were authorized in June, 1929; the material was ordered in July and August, 1929, and the cars were built in November and December, 1929.

Q. So that they were actually—from the beginning to the end, ordered and the material purchased, and built in 1929? A. Entirely.

Q. Entirely? A. Yes.

Q. Now, in regard to locomotives. We were discussing the question of locomotive failures and I asked you whether the figures pertaining to locomotive failures applied to all locomotives using Gulf Coast Lines or applied only to Gulf owned locomotives: Did you find that out for me? A. Yes.

Q. What is that information, please?

A. My answer was that the failures applied to all locomotives.

Q. How many of those locomotives that were actually Gulf Coast Lines, how many were rented locomotives in 1929?

A. During 1929 the Gulf Coast Lines owned locomotives were 139. At sometime during the year 49 Missouri Pacific locomotives were used on the Gulf Coast and 54 International-Great Northern were used, or a total of 103.

Q. 103 so-called foreign locomotives, and how many—

The Witness: 139.

Q. 139? A. 139 Gulf Coast owned locomotives.

Q. I don't know whether I asked you for this: Have you got that information for 1930?

A. Yes. In 1930 the Gulf Coast owned 129 locomotives. They used at some time during the year 39 Missouri Pacific locomotives and 56 International-Great Northern locomotives, a total of 95.

Q. And for 1931?

A. In 1931 they owned 122 locomotives of their own. They used at sometime during the year 41 Missouri Pacific locomotives and 54 International-Great Northern locomotives, a total of 95.

Q. A total of 95. Just Missouri Pacific and I.-G. N.?

A. It includes the mileage made and failures made by any locomotives operating during the year on the Gulf Coast.

Mr. Biggs: Now I move that the evidence of Mr. Rodgers, in his examination in chief, in regard to using the indicia of failures as a test of efficiency of lomocotives for the years 1929, 1930 and 1931, be stricken, because the result of this examination is that for those years nearly one-half the locomotives were so-called foreign locomotives, and he was using these foreign locomotives as a basis of stating that the locomotives during those years were in better condition, better maintained, than during the 1921-1923 cycle where there were only Gulf Coast locomotives and—I will ask just one other question before going on.

Q. A lot of the locomotives that were in use during 1920 to 1923, have been retired; is that correct?

A. There were five locomotives which were in use in '20 and '23 retired in those years.

Q. How many retired in subsequent years?
A. Ten locomotives retired in 1927.
Q. One in 1929?
A. One in 1929, ten in 1930, seven in 1931.

Mr. Biggs: I move that the evidence be stricken, in view of the statement of the witness.

Mr. McConaughy: If Your Honor please, in the first place, the statement of fact made by Mr. Biggs as the basis for his objection is not correct. Mr. Rodgers stated that at sometime during specified years there were L.-G. N. and Missouri Pacific locomotives. That could have been five minutes, or ten miles of running, for one year. Therefore, it is not correct to say that all of the L.-G. N. locomotives listed there were there during the whole year.

In the second place, if those locomotives were leased and operated by the Gulf Coast Lines the ownership is not material from the standpoint of determining the condition of locomotives that were operating on the Gulf Coast Lines. That is the proposition we were attempting to show in the beginning, and ownership is irrelevant.

The Court: Motion overruled.

Mr. Biggs: Q. Mr. Rodgers, why did you cut off this exhibit at the year 1931?

A. Well, in preparing this exhibit I discussed it with Mr. McConaughy and he indicated that that was the years that it should be prepared for.

Mr. McConaughy: I think Your Honor will recall that I explained to the Court the reason why that exhibit was prepared in that form. It is in the record.

Mr. Biggs: Q. You stopped in 1931, at the request of Mr. McConaughy? A. Yes.
Q. As I understand it, you are in the St. Louis office?
A. Yes.
Q. This exhibit was prepared at your direction?
A. Yes.
Q. It was not actually prepared by you?
A. This was prepared in the St. Louis office by me and my assistants.

Mr. Biggs: That is all.

Redirect Examination

By Mr. McConaughy:

Q. Mr. Rodgers, the information shown there is from the books and records of the Gulf Coast Lines? A. Yes.

Recross Examination

By Mr. Biggs:

Q. Did you personally verify these figures? A. Yes.

Mr. Biggs: That is all, Your Honor.

J. A. Brown,

having been heretofore duly sworn, upon resuming the stand testified as follows:

Further Cross Examination

By Mr. Biggs:

Q. Mr. Brown, your exhibits Nos. 20, 21, and 22: In regard to those exhibits, they all were cut off at the year 1931; is that correct?

A. No—I don't have those numbers. Will you let me get your numbers on these? I didn't number them.

Q. These are the three exhibits (handing exhibits to the witness).

These three exhibits all stop at 1931, do they not; they don't include any information past 1931? A. Yes.

Q. Why did you stop at that year, that particular year, Mr. Brown?

A. Mr. McConaughy asked me to prepare these exhibits covering these years.

Q. It was on his request that you did that? A. Yes, sir.

Q. In your examination you testified that there was a six million dollar—approximately six million dollar profit arising out of this one hundred dollars received by the Gulf Coast Lines as a charge for icing?

A. No—out of this one hundred dollars, did you say?

Q. Received per car by the Gulf Coast Lines as a charge for [ising].

A. I testified there was a profit during the period mentioned, 1922 to 1931, inclusive, of $6,171,876. from the refrigeration, that the shipper paid for having these cars refrigerated from origin to destination. The total refrigeration charge being turned over to the Gulf Coast Lines and they paying for all of the cost of the icing at origin on their line to destination, and at destination, and after paying all of those charges they had that profit left during those years, over that period.

Q. The amount that the Gulf Coast Lines received was one hundred dollars a car?

A. I merely used that, Mr. Biggs, as an illustration that, if the charge might be one hundred dollars a car the shipper paid, and the Gulf Coast Lines had to pay out seventy-five dollars, they would have twenty-five dollars.

Q. That was just an illustration? A. That is all.

Q. That was not a standard charge for the—

The Court: That is what he stated when he first testified.

Mr. Biggs: Q. How did you determine, Mr. Brown, that there was that six million, one hundred and some thousand dollars of profit?

A. I determined it by making inquiry as we went along as to how we were progressing, from the very beginning of the arrangement. There was some possible doubt in our minds, or in the minds of some of our people, as to whether this would be profitable. It might have resulted in a loss, but I felt sure that it would not, and from the very beginning of the arrangement I inquired of the auditor each year, "How did it come out?" and he gave me the figures. He had the figures by years.

Mr. Biggs: Q. As I understand it, this statement in regard to profit is based on what information you received from the auditor of the Gulf Coast Lines; is that correct? You don't have anything to do with the keeping of the books and records of the Gulf Coast?

A. No, I don't keep the books.

Q. That is not within your jurisdiction, so to speak?

A. No, sir.

Q. How much profit or how much loss resulted from this transaction each year, or over the period of time, you

personally, or people under your direct jurisdiction, knew nothing about; it would depend on what the auditor told you, is that right? A. Yes; that is correct, yes.

Q. Now, you also testified in regard to the shortening of the schedule time for trains between the Valley and St. Louis? A. Yes.

Q. Is it a policy, or do railroads in peace times, ignoring the present war time where there is a lot of special rules and restrictions, but in peace times during the 30's or 20's, do railroads in this part of the country, the Missouri Pacific, have the right to fix a schedule purely in their own discretion, without any restrictions?

A. That is a broad statement. Yes, they have a right to fix—

Q. They have, as an actual practice?

A. Without any restrictions, you say? Certainly, we sit down and figure a schedule and I don't know of any restriction against it.

Q. Don't you submit all schedules to the Western Conference; is there not an organization called the Western Conference of Railroads, or some similar title?

Mr. McDonald: May I be permitted to object to that question, Your Honor? It is wholly irrevelant to any issue in this case. It involves issues now pending in Lincoln, Nebraska. There is no showing that this witness has any knowledge of it, and it can serve no purpose in the determination of the objections to this Plan.

The Court: He may answer, subject to the objection.

The Witness: You say I may answer it?

The Court: Yes.

The Witness: I have not been directly on the payroll of the Missouri Pacific Lines since June—

Mr. Biggs: I am not talking about war time.

The Witness: I don't know what the situation is—

Q. Let us go to prior to 1942.

A. Prior to 1942 we had conferences in which we would discuss schedules, because no single schedule can be made without affecting other territories and usually it was

rather far-reaching, so that we take a look at what the schedules of other lines are, and rarely would we make a schedule without taking into consideration what effect it may have on all of our schedules at other points, and on other commodities. So that, we do have these conferences with other lines and we—

Q. What is the name of that association?

Mr. McConaughy: Your Honor, I object to this line of testimony. It seems to me it is utterly immaterial to the main examination here. It is not cross examination. He is trying to bring out something entirely different that has no bearing. We didn't introduce anything of that kind in the direct examination. The direct examination pertained to the manner of establishing schedules, to show the efficiency of this management. The fact that they may have consulted with some other railroad who participated in the conference has no connection whatever.

Mr. Biggs: The evidence in chief in this case is directed to the point that, as the result of the Missouri Pacific coming into the picture the schedule between Houston, or some other point, and St. Louis, was tremendously cut on account of the efficiency and operation of the Missouri Pacific and the efficiency and operation of the Gulf Coast Lines, as the result of the Missouri Pacific taking over control. There is no question that there was that testimony in the record.

Mr. McDonald: May I ask one question to support this objection?

The Court: Very well.

Mr. McDonald: Q. Isn't it a fact that the Western Association of Railroad Executives was not organized until 1932?

The Witness: I think that is the year, yes.

Mr. McDonald: We object to any testimony with reference to what the practice between 1932 and 1940, was because it is wholly irrelevant to the successful operation of this railroad from 1924 to 1930.

Mr. McConaughy: I join in that objection.

The Court: Sustained.

Mr. Biggs: Q. We will limit it to 1932. Prior to 1932, was there any conference between the Missouri Pacific and the Missouri, Kansas and Texas, or the Frisco, in regard to schedules between competing points?

Mr. McConaughy: If Your Honor please, I object to that on the same ground that I made the objection before. It is not proper cross examination.

Mr. Biggs: It is proper. They say that because of this efficiency these schedules were lower.

The Court: He may answer.

Mr. Biggs: I want to bring out that unless the three competing companies agree to a change in schedule the schedule is not changed, no matter how efficient or how fine the operation is.

Mr. McConaughy: I don't see what bearing that has on it.

The Court: I don't know that I am prepared to answer your question.

Mr. McConaughy: It seems to me it has no bearing. If the schedules were shortened that is something the Missouri Pacific did.

Mr. Biggs: They might have been shortened because of the fact that the other railroads agreed to the shortening.

Mr. McConaughy: What difference does that make?

Mr. Biggs: If the shortening was the result of an agreement rather than operating conditions then it certainly doesn't indicate an improvement. Your evidence was offered on the basis that the change in schedules was an indication of improvement in operation of the Missouri Pacific trains. If these schedules were not based on that, but were based on an agreement between the Missouri Pacific, the M. K. & T. and the Missouri Pacific, it is certainly pertinent and relevant.

The Court: The Court has ruled. He may answer.

(Last previous question read as follows: "Q. We will limit it to 1932. Prior to 1932, was there any conference between the Missouri Pacific and the Missouri, Kansas and Texas, or the Frisco, in regard to schedules between competing points?")

A. I don't recall any conferences, but I know that there are conferences of all railroads—

Mr. McConaughy: Your Honor, I would like to make another objection to that, because the testimony he gave pertained to traffic out of the Valley and schedules to Kansas City. He merely mentioned that he met the Southern Pacific competition at Kansas City. He didn't state the hours at all.

The only questioning pertained to schedules to St. Louis. Now his question doesn't specify he is talking about the same thing. In other words, it is not appropriate to ask questions generally about agreements on schedules.

Mr. Biggs: I will submit to that, but I would like to call Mr. McConaughy's attention to the far afield testimony that was given yesterday by one of his witnesses. We will limit it, then, if the objection is made.

Q. Mr. Brown, were there any conferences between the Missouri Pacific and the Missouri, Kansas and Texas in regard to schedules between Houston and St. Louis?

Mr. McConaughy: That is not quite it, Your Honor. The Valley traffic came from Brownsville.

Mr. Biggs: There was traffic from Houston. Houston certainly is on the Brownsville Railroad and is certainly on the Gulf Coast Lines. That is right direct.

The Witness: I don't know of any conference—

The Court: Wait a minute, Mr. Brown.

Mr. McConaughy: The testimony was that the perishable traffic moved from the Valley to St. Louis. Those are the schedules he testified about.

Mr. Biggs: Are you stating for the record that no perishable traffic was moved out of the Houston area?

Mr. McConaughy: You can ask him, if you want that.

Mr. Biggs: Q. Did you ever ship a car of perishable freight out of the Houston area?

A. Oh, I suppose they have, yes.

Q. Are there not some vegetables grown around there?

A. Yes, I think so; some.

Q. Going back to the question, what was your answer?

A. The question I believe was, was there any conference with the M. K. & T. on schedules from Houston to St. Louis. I don't recall any.

Mr. McConaughy: He answered it before I got the objection in.

Mr. Biggs: Q. As I understand it from your answer, Mr. Brown, you do not remember of any conference taking place, prior to 1932, between the Missouri Pacific and the Gulf Coast Lines, on the one side, and the Missouri, Kansas and Texas on the other side, in regard to any schedule between St. Louis and Houston; is that right?

A. Mr. Biggs, we were having conferences with the M. K. & T. and Frisco and the Southern Pacific all the time from 19—as far back as I can remember today, but I don't recall any conference with the M. K. & T. regarding, or relating to the schedule from the Rio Grande, on vegetables, to St. Louis, at any time. I don't recall any.

Q. Do you remember conference with regard to a schedule on other commodities?

Mr. McConaughy: That is objected to. There is no—

The Court: Objection sustained.

Mr. Biggs: The witness is not denying that there were such conferences. I think it has evidentiary value if I can show there were conferences between these competing points, on other commodities. I don't think I am limited to the question of vegetables alone.

Mr. McConaughy: The answer to that is that there was no direct testimony on the subject of any other schedules.

Mr. Biggs: Q. Do you remember any conferences with the Kansas City Southern on shipments between compet-

ing points and the City of Kansas City, in regard to schedules?

Mr. McConaughy: Your Honor, I object to that because it is too broad. The testimony that was given on direct—

Mr. Biggs: Q. Or any schedule in regard to products of the Valley, fruit and vegetables? A. It seems to me—

Mr. McConaughy: And it is not limited as to time.

Mr. Biggs: Prior to 1932.

A. Your Honor, it seems to me that they are making a very big mystery about something that is very simple to me.

The Court: You make it simple to us.

The Witness: Generally speaking, we made these schedules without any conference with anyone. I can not say we didn't talk with people about the schedules, other people that were interested in the same traffic; we did, naturally. We did about all our business, but we made these schedules in the Rio Grande Valley, so far as I know and can recall, without any conference with anyone. We told them we were going to make them and we made them, and they naturally made the same schedules, using their connections to reach the same points.

Mr. Biggs: Q. You say they made the same schedule you made, the same time schedule?

A. They would meet schedules when we would make them, and we would meet theirs if they made them. Certainly, these railroads all ran on about the same schedules.

Q. If, for example, it was impossible for the Katy to run a train between Houston and St. Louis in less than sixty-five hours, the Missouri Pacific, even if it was possible to run a train in sixty hours, would have a schedule of sixty-five; isn't that true, Mr. Brown?

A. Well, now, that is a hypothetical question. I don't know. I wouldn't know how to answer that.

Q. Did the Missouri Pacific ever institute, to your knowledge a schedule between a competing point with the Katy, that the Katy was unable to meet, from an operating standpoint?

Mr. McConaughy: I object to the question. It doesn't pertain to the direct examination.

The Court: He may answer.

A. Yes.

Mr. Biggs: Q. Tell us about it.
A. We run the Sunshine Special from Houston to St. Louis, a distance of 815 miles, and the M.K. & T. distance is about 1040 miles, and they don't meet it.
Q. What about freight trains?

The Court: What about what?

Mr. Biggs: Freight trains.

A. I think that is equally true of some freight trains. I think there are some schedules that the M.K. & T. can't meet that we make. I can't be sure of that; I don't recall that definitely.
Q. Isn't it a fact that the freight train schedule between Houston and St. Louis, on the Missouri Pacific is the same as the freight train schedule of the M.K. & T. between Houston and St. Louis, and yet the Katy has to go 150 miles further. A. I don't know.
Q. You are not stating that that is not a fact?
A. In further answer to your question, however, I will say that the M.K. & T. had a schedule from Houston to Kansas, freight schedule on perishables that we won't meet and can't meet.
Q. That is because you have no direct line between Houston and—
A. We meet it in effect, but we don't make the same schedule.
Q. You could if you wanted to run over the Kansas City Southern, could you not?
A. I don't know. If the Kansas City Southern would join we possibly could.

Mr. Biggs: I believe that is all.

Redirect Examination

By Mr. McConaughy:

Q. You testified with reference to the saving in connection with the icing charge? A. Yes.

Q. The A.R.T. cars. I believe you said that you obtained the information as to the amount of that saving in the regular course of business; is that right? A. Yes.

Q. And that information is shown on your exhibit? A. No.

Q. Excuse me. That information is the basis of your testimony? A. Yes, sir.

Mr. McConaughy: That is all.

Mr. Biggs: That is all, Mr. Brown. Thank you.

Mr. McConaughy: You don't want Mr. Brown any more, Mr. Biggs? He is from Houston and wants to go home.

Mr. Biggs: No.

If the Court please, I would like to have five minutes.

The Court: Announce a five-minute recess.

(Thereupon the Bailiff announced a five-minute recess.)

Mr. McConaughy: Before Mr. Brown goes, he made one misstatement in answer to a question of Mr. Biggs. He would like to have it corrected.

The Court: Open Court.

(Thereupon the Bailiff announced the opening of Court.)

J. A. Brown,

having been heretofore duly sworn, testified further as follows:

Direct Examination

By Mr. McConaughy:

Q. Mr. Brown, you mentioned in connection with this icing charge saving that the period involved was from

1922 to another date, is that correct; do you recall saying that?

A. The saving of $6,171,876 was over the period 1924 to 1932, inclusive, calendar years.

Mr. McConaughy: That is all, Mr. Brown.

Cross Examination

By Mr. Biggs:

Q. I didn't know that you had a schedule of that saving. Have you a schedule of that saving? A. Yes, I have.

Mr. Biggs: I would like to have that in evidence, if Your Honor please.

Mr. McConaughy: Is this the schedule, Mr. Brown?

A. That is a schedule that was secured from our accounting department in Houston.

Mr. Biggs: Who prepared it?

A. Mr. Edrington, Auditor of the Gulf Coast Lines, in Houston.

Mr. McConaughy: Why don't we have this set up on a separate piece of paper?

Mr. Biggs: One more question, Mr. Brown.

Q. In your discussion you mentioned in regard to the division of rates between the Missouri Pacific and the Gulf Coast Lines: Any division of rates between those companies had to be made with the consent of the Missouri Pacific, is not that correct?

A. I don't understand the question.

(Last previous question read to the witness.)

A. An agreed division is naturally made with the consent of both parties, yes.

Q. And since 1925, the Gulf Coast was under the control of the Missouri Pacific?

Mr. McConaughy: I object to that. Mr. Brown is not qualified to answer that question.

The Court: Sustained.

Mr. Biggs: That is all.

The Court: We will let you go this time.

The Court: Announce a five-minute recess.

(After a brief recess the hearing was resumed.)

C. S. KIRKPATRICK,

having been heretofore duly sworn, upon resuming the witness stand testified further as follows:

Further Cross Examination

By Mr. Biggs:

Q. Mr. Kirkpatrick, in regard to Group Exhibit 17, you will see that that exhibit stops at the year 1931: Why did you stop at 1931?

A. I haven't got mine numbered, but that is—

Mr. McConaughy: You might show him the exhibit.

Mr. Biggs: Q. You have the exhibit there. This one here (indicating). A. Yes; we stopped at 1931.

Q. Why did you stop at that particular year, Mr. Kirkpatrick?

A. Mr. McConaughy asked us to prepare information up to and including that time.

Q. Did he give you any reason for stopping at 1931?

A. No, sir.

Q. Have you got Exhibit No. 18? That is the other exhibit, that is this one (indicating). A. Oh, 18? Yes.

Q. What is the report to the Interstate Commerce Commission called, BV 588?

A. That is Bureau of Valuation 588.

Q. What is contained in that report?

A. Well, I can't tell you everything that is contained in it, but it is a report.

Q. And contains additions and betterments, doesn't it?

A. Yes. It is supposed to keep the value of the property used in keeping the additions and betterments and

property values up to date, in case they want to use it for that purpose.

Q. This is a report that is submitted to the Interstate Commerce Commission, which the Commission uses in keeping the value of the Missouri Pacific or whatever company submits the report, up to date?

A. That is my understanding of it.

Q. The Interstate Commerce Commission checks these reports and sometimes deletes items or changes the figure, do they not?

A. Yes, I suppose they are. That could be handled with the accounting department, however.

Q. You set out on the first page of Exhibit 18—on the first page you have set out the expenditures chargeable to road for additions and betterment work during the period under consideration, as shown below, and given by years from 1925 to 1932, with a total of $11,482,420.71; is that correct? A. Yes, sir.

Q. Are those the same figures that are shown in your report known as BV 588?

A. I couldn't say whether there was any difference or not. They were taken from completion report and from basic information in my office and the Auditor's, and came from the same source as the 588, I am sure. I don't know whether they contain identical figures or not.

Q. You do not know, then, whether these figures would coincide with the figures filed with the Interstate Commerce Commission in BV 588, showing additions and betterments over these years?

A. I couldn't say that they check exactly, but they are substantially in accordance with what was spent.

Q. Substantially within the figures filed with BV 588 and approved—

A. I can't say whether the totals check or not.

Q. You are not saying it would substantially check with it? A. I think it would, yes.

Q. Let me understand what you mean by substantially: You mean within a hundred thousand dollars?

A. I would say five per cent. or two per cent., something like that.

Q. Can you secure for me what the BV 588's for those particular years would be?

A. I couldn't answer that question. That would be a tremendous job and would take a long time to do that. That would be for all the years.

Q. It is one annual report that you file each year, isn't that true? A. Well, it is for the Gulf Coast Lines?

Q. That is right.

A. And they file annual reports with the Commission separately for each railroad.

Q. But there is one figure, one total figure in this BV 588 for each one of these years, that would show additions and betterments for that particular year?

A. I couldn't answer that. I don't know whether they set it up as one figure or not.

Q. By one figure I mean there is an addition of a number of figures and one total— A. I couldn't answer that.

Q. Have you ever seen a BV report?

A. Yes, we have them in our office. We prepare part of them.

Q. You prepare them? A. By the Valuation Department.

Q. You don't know whether the additions and betterments are totaled?

A. Yes, they are totaled on the BV form.

Q. On the BV form?

A. Yes, but whether or not they are totaled for the whole railroad, various corporations, and how they are totaled, I am not familiar with that.

Q. Take the N. O. T. & M. as a separate unit: Each year there is a total given the ICC on the BV 588, showing additions and betterments for that particular year; is that not correct? A. I believe so, yes.

Q. Can you furnish me with the BV's, or have furnished that information?

Mr. McConaughy: I object to that. He has just shown that this is a report filed with the Interstate Commerce Commission. It is quite as accessible to Mr. Biggs as it is to Mr. Kirkpatrick. He has also shown that he had an auditor, Mr. Comstock had an auditor, going over the reports in Washington.

Mr. Biggs: This was just introduced in evidence, Your Honor, and Mr. Delaney was not psychic when he was in Washington three or four months ago.

The Court: He may answer.

Mr. Biggs: I will reframe the question. Mr. Kirkpatrick, can you furnish me, for the years 1925 through 1932, inclusive, with a list of expenditures chargeable to road for additions and betterments on the Gulf Coast Lines, as shown by reports to the Interstate Commerce Commission on BV 588? A. Yes.

Mr. Biggs: That is all.

Mr. McConaughy: All he did was answer yes, he can do it.

Mr. Biggs: Will you furnish it, please?

Mr. McConaughy: I object to it, Your Honor.

Mr. McConaughy: Mr. Kirkpatrick, will you tell us what is involved in furnishing that information? First of all, will you tell us what the volume of paper that is involved in the BV 588 for the years mentioned by Mr. Biggs in his question would be?

The Witness: It would be a stack of paper that would fill up one corner of this room here.

The Court: How much of one corner?

The Witness: Oh, about eight by twelve, something like that. I mean, the information that we would have to pull out and work over.

Mr. McConaughy: Is about that size?

The Witness: Yes; there is so many thousands of them.

Mr. McConaughy: Your Honor will note from his question that he seemed to want each and every addition and betterment, and it was not limited to the years, but to every addition and betterment.

Mr. Biggs: I will limit it to the total of each of those years, the total to correspond with these figures set out in Exhibit 18.

Mr. McConaughy: How many days' work, by how many railroad men would be involved in getting that informa-

tion? That would be eight years, the total A and B's for eight years.

The Witness: It would mean, roughly, I believe, from my knowledge, from what we have done—it would be for that period of time around three thousand different completion reports that we would have to get out and check over in order to arrive at a total.

Mr. McConaughy: I don't believe you quite get my question, Mr. Kirkpatrick. He is asking you to take these BV 588 reports and get the total by years, for those eight years. How much work, how many days' work, by how many men, would be involved in doing that?

The Witness: Well, I would have to approximate it.

Mr. McConaughy: That is all right.

The Witness: I believe it would take three or four men around thirty days to do it.

Mr. McConaughy: I submit, Your Honor, that is an unreasonable request, when Mr. Biggs has this information accessible to him. It is a public document.

Mr. Biggs: May I examine the witness?

The Court: Yes.

Mr. Biggs: Q. You say it would take three or four men thirty days. How many corporations have you got, fourteen? A. Fourteen, I believe.

Q. And there are fourteen separate BVs for each year, is that correct? A. Yes.

Q. It would take three or four men thirty days to look through these reports and take one figure from each of the fourteen reports for these years and add them up and give us a total?

A. I believe it would, yes, because you have to get in the files and dig them out.

Mr. McConaughy: I would like to understand what you are really asking for. I will ask Mr. Kirkpatrick.

Mr. Kirkpatrick, what information is shown on one BV 588? A. The information shown—

Mr. McConaughy: Does that cover one completion report or does it cover a whole year.

The Witness: I believe it covers a month.

Mr. McConaughy: One completion report?

The Witness: Yes.

Mr. McConaughy: So you have to look through this whole series of completion reports to get the total for a year?

The Witness: Yes.

Mr. Biggs: Q. Is there no information located in your office, of Missouri Pacific or its subsidiaries, that shows the total amount of BVs for additions and betterments during the course of any one year?

A. I don't think it is—total additions and betterments are kept, but I don't believe—

Q. The total amount shown by the BV report—

Mr. McConaughy: Now he is going into another subject. The point that Mr. Biggs asked about was the BV 588.

Mr. Biggs: That is right.

Mr. McConaughy: May I ask Mr. Kirkpatrick a question?

The accounting department keeps records of about the same thing, don't they, additions and betterments?

The Witness: Yes.

Mr. McConaughy: And that is a fairly simple thing to get?

The Witness: Yes.

Mr. McConaughy: And the Auditor could get that up without much trouble, while if you were going to get it up there is involved all this examination of separate completion reports for practically each—

The Witness: That is right. I never have had it in that way.

Mr. McConaughy: Also the accounting department rec-

ords of A's and B's may vary slightly, but not much from the BV 588?

The Witness: That is correct.

Mr. McConaughy: So you would have substantially the same information from the Auditor, which would be simple to obtain without all this work from the BV 588's?

The Witness: Yes.

Mr. Biggs: If the Court please, there is a substantial difference—I think we are entitled to know what additions and betterments were actually allowed by the Interstate Commerce Commission and approved for rate-making purposes. Additions and betterments may be considered so by some accountants, that are actually expenditures for maintenance and expenditures for repairs and not additions and betterments in any sense of the word. Here we have the Interstate Commerce Commission and here are reports filed in the Interstate Commerce Commission as to what are actually, truly additions and betterments.

Mr. McConaughy: His statement assumes something and I would like to find out whether it is correct or not.

Mr. Biggs: May I ask Mr. Eckert a question?

(Here followed an aside conference.)

If Your Honor please, Mr. Peet advises me that Mr. Bradley, who is the Valuation Engineer, would know the answers to these questions as to whether this information on BV's is obtainable, and I believe I would like to ask for an adjournment. I think he could probably be brought over here in ten minutes.

Mr. McConaughy: That is all right with us, Your Honor. I think it would be a good idea to get this straightened out. I think Mr. Biggs misconceives what he is asking Mr. Kirkpatrick to do.

The Court: Announce a brief adjournment. Notify me when you are ready.

(Adjournment at 11:35 A. M., the said witness appeared at 12:05 P. M., at which time court reconvened, and the following proceedings were had:)

H. T. BRADLEY,

a witness of lawful age, being duly produced, sworn and examined, testified as follows:

Direct Examination,

By Mr. Biggs:

Q. Will you state your name, please? A. H. T. Bradley.

Q. And what is your connection with the Missouri Pacific? A. I am Valuation Engineer of the System.

Q. Of the System? A. Yes, sir.

Q. And do you have under your supervision the file of these BV-588s with the Interstate Commerce Commission?

A. Yes.

Q. I have discussed this matter with you just before going on the stand, is that true? A. That is right.

Q. And you advised me that it would be impossible to quickly prepare a statement or be able to testify as to what the total BV-588s for the Gulf Coast Lines would be for the years 1925, 1926, and 1927, is that right?

A. That is right. They are lumped for the period, 1919 to 1927.

Q. However, in regard to the years 1928 through 1932, it would be possible for you to communicate with Houston and be able to report as to the amount of the BV-588s pertaining to additions and betterments for those particular years, is that correct?

A. Yes, with one possible exception. I believe the years 1928 and 1929 were combined, or else 1929 and 1930; I am not sure.

Q. All right, if there is a combined report for two years, then that is perfectly satisfactory to give it to me in the combined report. I have no objection to that.

A. I can do that.

Q. If you will, please. This is for the Gulf Coast Lines.

A. Yes. Does that include the I. & G. N.?

Q. No, sir. A. Or just the Gulf Coast Lines?

Q. Just the Gulf Coast.

Cross Examination,
By Mr. McConaughy:

Q. Mr. Bradley, will you kindly describe what BV-588 reports to the Interstate Commerce Commission are?

A. That is an annual report required by the Interstate Commerce Commission to be filed annually, and it shows the units of property added, and their cost by primary accounts and units of property retired, and their cost for each year. Now, that represents property completed during the year in question, physically completed.

Q. And what does the Interstate Commerce Commission do with those reports?

A. Those reports are used in bringing valuations to date; that is, they are used to supplement the original inventories made between 1914 and 1920.

Q. These reports are filed with the Bureau of Valuation of the Interstate Commerce Commission, are they not?

A. That is right.

Q. They don't go to the Bureau of Accounts? A. No.

Q. Now, you say they are used for bringing valuations to date. Have they been used in the case of the Gulf Coast Lines or the Missouri Pacific to bring valuation to date?

A. Yes, sir.

Q. Well, has there been a valuation of the Gulf Coast Lines by the Interstate Commerce Commission since 1917 that you know of?

A. Not as under the term Gulf Coast Lines.

Q. Isn't this what you mean: That they might be used at some future time as a basis for bringing valuations to date, if they ever did?

A. No, I don't think so. We had the reorganization valuation in 1935, and then—

Q. (Interrupting) Now, as to that, wasn't that merely a report of elements of valuation by the Bureau of Valuation?

A. Yes, but you have to have this information to get the elements.

Q. It was not a valuation, though, was it?

A. Well, it depends on what you call a valuation. It is the elements of value, although no final valuation.

Q. The document was entitled "Elements of Value", wasn't it? A. That is right.

Q. Now, Mr. Bradley, the preparation of these BV-588s is under a set of rules promulgated by the Bureau of Valuation, isn't that right?

A. No, I don't think so. I think it is promulgated by the Interstate Commerce Commission.

Q. All right. Now, the Auditor keeps a record of additions and betterments, doesn't he?

A. No, I don't think he does.

Q. Aren't they shown right along in the books—additions and betterments?

A. He records the charges as they occur, yes.

Q. Yes, and that is done pursuant to a set of regulations of the Commission? A. That is right.

Q. And those regulations may be or are in certain respects different from the regulations that govern the making up of the BV-588s, is that correct?

A. There are several differences.

Q. If you took a report for any one year on BV-588s and the Auditor's report to the Commission and compared them, they would not necessarily cover the same additions and betterments, would they?

A. No. You have a difference in time element.

Q. That is right. In other words, the Auditor accrues additions and betterments as the expense for them is incurred, isn't that right? A. That is right, yes.

Q. Whereas for the BV-588s, they are based on completions of the jobs, isn't that right?

A. Yes, upon final completion of the job.

Q. So if you were to take the figures Mr. Biggs has asked you for from the BV-588s, they would not correspond with the Auditor's figures, necessarily?

A. That is right, they would not.

Mr. McConaughy: Now, in view of that testimony, I would like to ask Mr. Biggs why he wishes to have these BV-588 figures.

Mr. Biggs: Your Honor please, as disclosed by Mr. Wyer's testimony and argument of yesterday, one of the main bases of their defense is the question of additions and betterments. Now, here we have some figures on additions and betterments that are filed with the Interstate Commerce Commission, with the Bureau of Valua-

tion. They have got an exhibit here, and we are asking for a comparison of their exhibit with these figures, and I certainly think we are entitled to it. Now, this will extend over a long period of years, and if there is only a slight discrepancy, why, that is one thing, but if there is a major discrepancy in the middle years' period, why, it is a matter of substantial difference. I certainly think we are entitled to it. The witness has indicated he can have them for us. When we see the figures, why then I can be in much better position to judge the competency or incompetency, or the relevancy or irrelevancy of the document.

Mr. McConaughy: It sounds to me as if Mr. Biggs is just curious.

Mr. Biggs: No, I am not curious.

Q. Did I understand you to say, Mr. Bradley, that you could supply information for the period, 1925 through 1932? A. No.

Mr. Biggs: 1928.

The Witness: 1928, he asked me. 1928 through 1932.

Mr. Biggs: You cannot supply the other years. That is the reason I am asking for those.

Q. All right, I just wanted to make that clear. You have got to combine 1928 and 1929 together.

A. Well, I am not entirely clear, but I know that there was one 2-year period in there was combined. Now, whether it was 1928 and 1929, or 1929 and 1930, I don't remember.

Q. How long will it take to get that information?

A. Why, I would think a couple of days, maybe.

Q. How many men would have to work on it?

A. It would not be a very big job. You have the figures for each year, for each road. It would just be a matter of adding the roads together.

Mr. McConaughy: Well, may we have this information obtained in this way, so that it will not delay this proceeding? Let Mr. Bradley prepare the information for the years 1928 through 1932, which Mr. Biggs has requested,

in tabular form, and allow it to be filed as an exhibit in these proceedings. Will that be satisfactory, Mr. Biggs?

Mr. Biggs: If Mr. Bradley is going to—as I understood from him in my conversation with him before he started to testify, he thought he would have it here by tomorrow afternoon. If that is correct, why, we will still be trying this case tomorrow afternoon.

Q. What do you say, Mr. Bradley?

Mr. Biggs: If he cannot—

A. I cannot tell.

Mr. Biggs: I understand there is no commitment—don't misunderstand me, Mr. Bradley, on that statement. We will know more about that after you have had an opportunity to make inquiry.

Mr. McConaughy: All right, if it is obtainable here before the session closes, Mr. Bradley will bring it in; if not, may we file it in the proceedings as a Comstock exhibit?

Mr. Biggs: That is all right.

Mr. McConaughy: And there is no continuance of the hearing for that purpose?

Mr. Biggs: I am not asking for a continuance.

The Witness: May I ask one question? What roads are included?

Mr. Biggs: The Gulf Coast Lines.

The Witness: The same that are in the Plan?

Mr. Biggs: That is right. Thank you, Mr. Bradley. Do you have any questions, Mr. McConaughy?

Mr. McConaughy: Nothing more.

Mr. Biggs: I haven't anything more at this time, Your Honor.

Mr. McConaughy: Have you finished with Mr. Kirkpatrick?

Mr. Biggs: Yes.

Mr. McConaughy: He may go home now?

Mr. Biggs: Yes.

Mr. McConaughy: No redirect.

The Court: Shall there be a recess at this time?

Mr. Biggs: Until tomorrow morning, if Your Honor please.

Mr. McConaughy: Do I understand you want to cross examine Mr. Wyer tomorrow morning?

Mr. Biggs: I want to cross examine Mr. Wyer tomorrow. I do not want to make a commitment right at this moment as to whether I will be ready tomorrow morning or not. If I could call Your Honor sometime this afternoon on that. I am working on that, if Your Honor please.

The Court: Very well.

Mr. Biggs: I am trying to work it out.

The Court: You will try to proceed in the morning, if you can.

Mr. Biggs: I will try my very best to proceed in the morning.

Mr. Kitchel: Your Honor, there are quite a number of us here from New York. We would like to go back sometime.

The Court: I understand.

(Here ensued some further colloquy.)

The Court: Announce an indefinite recess.

12:20 P. M., March 21, 1945, indefinite recess.

St. Louis, Missouri,
March 22, 1945,
10:00 o'clock A.M.

Note: No morning session was had.

On March 22, 1945, at two o'clock P.M., the hearing was resumed.

Appearances: Same as heretofore noted.

The Court: You may proceed.

Mr. McConaughy: May the record note that I just handed to Mr. Biggs the table of figures on the savings for the icing charges, that he requested Mr. Brown to prepare?

Mr. Biggs: I haven't had a chance to see it; it was just handed to me, I mean.

Cross Examination of William Wyer

By Mr. Biggs:

Q. Mr. Wyer, what are your qualifications as an accountant?

A. I don't know that I have ever attempted to qualify myself as an accountant. I have, however,—

The Court: You gave your educational background in the Massachusetts Institute the other day.

The Witness: Yes.

Mr. Biggs: But there was no reference to any accounting.

The Witness: Well, I can say this on the subject of accounting, that I studied accounting and railroad accounting in M. I. T. and at the Harvard Business School, and I was in the accounting division of the U. S. Railroad Administration, after the first World War. I was an officer of the accounting division, with the title of Assistant to the Comptroller. I had about ninety accountants and engineering accountants under my supervision in that position, dealing with the maintenance accounts of all the railroads of the country and, of course, in my work I have dealt with accounts almost continuously.

Q. Your work has been accounting work, fundamentally?

A. No; I think my work has been engineering work. I consider myself as, first, an engineer.

The Court: Just an engineer?

The Witness: Just an engineer.

The Court: I thought you said some other word there.

The Witness: I didn't. I studied to be a civil engineer.

The Court: I thought you used some other word before that and I didn't get it.

The Witness: I thought, in the first place, that I was going to be a civil engineer and that is what I studied. I think the kind of engineering I do is probably the kind that is done by very few people. It is a very special field, but I think it is primarily engineering.

Q. You are not a certified public accountant? A. No.

Q. Did you ever take an examination? A. No.

Q. Have you ever taken any state examination in accounting?

A. No. I am a licensed engineer in the State of New Jersey.

Q. You are a licensed engineer in the State of New Jersey, but you are not a licensed accountant? A. No.

Q. So, you do not hold yourself out as having a formal accounting education? A. No.

Q. When you became Secretary-Treasurer of the Missouri Pacific you had charge of their accounting, did you not? A. No.

Q. Supervisory charge? A. No.

Q. You had no connection with their accounting?

A. No. Of course, we understand the treasurer has to keep certain books, but those are cash books; they are not part of the accounting in the customary accepted meaning of the word. I did not have jurisdiction of the accounts or the accounting department. I do have jurisdiction of the Accounting Department of the New Jersey Central, of course, in my present position, but I didn't have when I was with the Missouri Pacific.

Q. Did you have nothing to do with the allocation of the items in accounts and things of that character? A. No.

Q. You had nothing to do with the accounting of the Missouri Pacific while you were there, in a supervisory capacity? I am assuming you didn't write in the books.

A. Of course, you understand on a railroad every department head is probably consulted or conferred with by the head of the accounting department from time to time, and I was no exception to that, but I exercised no supervision over the accounting department. Of course, I drew on them constantly for information, but they were not under my jurisdiction.

Q. You had nothing to do with the allocation of money, property, credit, or anything else, of the various accounts?

A. No.

Q. During your period with the Missouri Pacific?

A. That is correct.

Q. Have you ever been criticized for the accounting practices of the Missouri Pacific?

Mr. McConaughy: I object to that, Your Honor. It is irrelevant and immaterial.

The Court: Sustained.

Mr. Biggs: Your Honor please, Mr. Wyer—

Mr. McConaughy: Your Honor, I don't see any use in Mr. Biggs stating a long tale here. If it comes merely down to a matter of criticism that is nothing he can use in cross examination. He has to show more than criticism.

Mr. Biggs: Mr. Wyer is the expert witness introduced by the Investors Group. He has testified he was employed by the Investors Group as their expert, he has appeared and introduced into evidence a great number of accounts and schedules of various kinds and characters, and has testified at great length, not only as to the actual facts included in those accounting schedules, but conclusions and prophecies, and many other things connected therewith on direct examination. Now, this is cross examination of this witness and one of the elements of cross examination is the question of his credibility.

Mr. McConaughy: You don't do that by showing more criticism.

The Court: Objection sustained.

Mr. Biggs: Q. Have you ever been accused of—

Mr. McConaughy: I object to that, Your Honor. It is immaterial.

The Court: Sustained, and objection to any other question starting out with "Have you been accused" will be sustained.

Mr. Biggs: I wish to now make an offer of proof. I would like to make the following offer of proof.

Mr. McConaughy: Wait a minute. I object to this making of an offer of proof. Where is the proof that he is offering? The mere statement from counsel is not an offer of proof.

The Court: What are you offering?

Mr. Biggs: I want to make the following offer of proof, that if Mr. Wyer was permitted to answer the question—

Mr. McConaughy: Wait a minute.

The Court: Let him proceed.

Mr. Biggs (continuing): —was permitted to answer the question, that he would state and admit that at a hearing—

Mr. McConaughy: What question do you refer to?

Mr. Biggs: So there won't be any question about it I will reframe the question.

Q. Mr. Wyer, has not your accounting in connection with the Missouri Pacific been criticised by Senator Wheeler, the Chairman of the Committee on Interstate Commerce of the United States Senate, at a hearing before the Sub-committee of said committee, on December 17 and 18, 1936?

Mr. McConaughy: I object to that question because—

The Court: Sustained.

Mr. McConaughy (continuing) —Mr. Wyer has just testified that he didn't do any Missouri Pacific accounting. Also on the ground that it is mere criticism, and on the third ground, that Senator Wheeler is not an expert in accounting.

The Court: As to Senator Wheeler—

Mr. McConaughy: I will withdraw the third objection.

Mr. Biggs: Mr. Wyer, if permitted to testify—

Mr. McConaughy: Wait a second.

Mr. Biggs (continuing): —I now offer to prove that he would so testify, that the following statements were made between Mr. Wyer and Senator Wheeler at that hearing:

"Mr. Wyer: Senator,"—

Mr. McConaughy: He says he offers to prove that. Where is his proof?

Mr. Biggs: I will prove that Mr. Wyer would so testify.

Mr. McConaughy: You are making the statement that Mr. Wyer would testify to that, and that is your own statement; is that right?

Mr. Biggs: As an offer of proof.

"Mr. Wyer: Senator, I think that every answer we ever gave to the Interstate Commerce Commission—

"The Chairman (Senator Wheeler): Every answer you gave them was evasive.

"Mr. Wyer (continuing): Was completely responsive to the inquiry.

"The Chairman: Every answer you gave them was an evasive answer, and did not give them all the facts or all the details.

"Mr. Wyer: That is a very broad statement.

"The Chairman: It is not only a broad statement, but I am perfectly willing to stand on it, based upon the record that is before this committee at this time.

"Mr. Wyer: Senator, I do not believe you can show me a single answer we ever made to the Interstate

Commerce Commission that was not responsive to the request which they made upon us.

"The Chairman: Every one of them was a slippery answer that was given to them, and every one of them was an attempt to conceal the real facts in the case. Every piece of evidence here shows it. You, yourself, testified, as I called attention to a moment ago, to the fact that it did not make a full disclosure."

I offer to prove that Mr. Wyer would so testify, and that that was an interrogation by Senator Wheeler of Mr. Wyer in his capacity as an officer of the Missouri Pacific Railroad.

Mr. McConaughy: I move to strike out the offer of the testimony, because—

The Court: Sustained.

Mr. Biggs: Q. Mr. Wyer, did the Interstate Commerce Commission in its 51st Annual Report, dated November 1, 1937, criticise—

Mr. McConaughy: I think that is enough of a question. He has the word "criticise" in there. I object to the question.

The Court: Sustained.

Mr. Biggs: Q. Mr. Wyer, did the Interstate Commerce Commission in its 51st Annual Report of November 1, 1937, make any statement—

Mr. McConaughy: I object to that question.

Mr. Biggs: Let me finish the question.

Mr. McConaughy: There is enough of it right there. The mere statement is not enough to use in impeaching a witness.

The Court: Objection sustained.

Mr. Biggs: I wish to make the following offer of proof: That if permitted by the Court to complete my question I would have asked Mr. Wyer if the Interstate Commerce Commission, in its 51st Annual Report, dated November

1, 1937, on pages 27 and 28 thereof, made the following statement, which pertained to Mr. Wyer's methods in regard to the books of the Missouri Pacific Railroad.

Mr. McConaughy: Excuse me a minute.

The Court: Read the question.

(Last previous question read by the reporter.)

Mr. Biggs: Mr. Wyer, in reply to said question, would admit that said Interstate Commerce Commission in said report made the following statement, and this is on pages 27 and 28 of said report:

"—Other instances of inaccurate and misleading statements in the reports filed with us by or on behalf of carriers have been fully developed in recent proceedings before the sub-committee of the Senate Committee on Interstate Commerce under Senate Resolution 71. Some of these misleading statements were furnished in connection with the obtaining of loans of public funds and with other important matters of public concern. The following instances are typical.

"The Alleghany Corporation is a holding company which had stock control of the Missouri Pacific Railroad Company and through a subsidiary purchased certain terminal-railway properties serving a packing house in Missouri Pacific territory. That railroad company contracted to purchase the properties from the subsidiary subject to our approval, but it made certain payments on the purchase price in advance of such approval and under the contracts it was liable either on the purchase price or as a guarantor against damage in the event of our disapproval for not less than $16,000,000. This liability was not shown in the annual reports filed with us by the railroad company, and in these reports $3,200,000, which had been paid under the contracts was shown in account 711, 'Special deposits', although it had been paid out and was not on deposit by the railroad company at all. In connection with applications of the Missouri Pacific for loans from the Reconstruction

Finance Corporation, balance sheets which failed to disclose the liability under the contracts and included the payments in 'Special deposits' were filed with the Reconstruction Finance Corporation and with us and were sworn to by the treasurer of the railroad company. Furthermore, in connection with an application by the latter for authority to issue securities we asked for a breakdown of an estimate of needed capital expenditures, and in a statement filed by the same officer a proposed payment under the above mentioned contracts was included in a total for 'Additions and betterments'.

"The device of reporting to us as 'Special deposits' money which had actually been expended under contracts for the purchase of securities was used by other railroad companies under the same control. Thus an amount paid by the Chesapeake & Ohio Railway Company on account of purchase of stock of the Chicago & Eastern Illinois Railway Company was so reported, and also amounts paid to Alleghany Corporation for an option on stock of the Erie and Nickel Plate railroads.

"As stated above, these are merely illustrations of incorrect and misleading reports out of several disclosed at the hearings.

"It would be of material assistance to us in obtaining accurate reports under section 20 and other sections of the statute if paragraphs (1), (2), and (7) were amended as indicated in item 10 of our legislative recommendations."

I also offer to prove that Mr. Wyer would admit that the same officer—

Mr. McConaughy: Admit in response to that question?

Mr. Biggs: Just a minute. I also offer to prove that the same officer—"the same officer" contained in said statement referred to Mr. Wyer, and that he would so admit if permitted to testify.

Mr. McConaughy: I move to strike out the statement, because it is a mere statement; to strike out the offer of

proof just made, on the ground that it is a mere comment by the Interstate Commerce Commission.

The Court: Sustained and offer denied.

Mr. Biggs: Q. Mr. Wyer, you have heard the two offers of proof just made, and if the statements made are true and correct, did you so advise the Investors Group when they retained you as their expert in this matter?

Mr. McConaughy: I object to that question as utterly irrelevant.

The Court: Objection sustained.

Mr. Biggs: I offer to prove that if the witness is permitted to answer that question he would testify that counsel for the Investors Group were very familiar with both of said statements and had been advised of the same.

Mr. McConaughy: How can he make that offer of proof? It is a mere statement.

The Court: Are you objecting to it.

Mr. McConaughy: I move to strike it out.

The Court: Are you objecting to it?

Mr. McConaughy: I move to strike the statement out. I move to strike out his offer of proof.

The Court: What is your motion?

Mr. McConaughy: I move that his offer of proof be overruled.

The Court: Sustained.

Mr. Biggs: Q. Mr. Wyer, have you got your exhibits with you? A. Yes.

Q. In regard to Exhibit No. 25, you filed this exhibit as the basis for your statement in regard to the background and outline of history of the Missouri Pacific from 1917 to 1944?

A. I don't know that that is an exact statement of what I said in connection with it, but this is a part of the financial history of the Missouri Pacific between those dates.

Q. And this was part of that history? A. Yes.

Q. And was the loss of that history?

A. Well, it is a part of it. I don't know what you mean by losing a loss.

Q. It is part of the history. Now, as I understand from your statement, Mr. Baldwin became president in 1923, is that true? A. Yes.

Q. And that you divided the history of the Missouri Pacific from that time to date into three periods, from 1923 to 1931, which I believe you called the Baldwin Improvement Period?

A. No, the first period was 1923 to 1930, inclusive.

Q. To 1930, inclusive, then. That was the Baldwin improvement period? A. Yes, I think I called it that.

Q. And then from 1931 to 1938, inclusive, as the Pre-War Period?

A. No, I don't think so. I think I called it 1931 to 1940, inclusive, 1931 to 1939, inclusive, was my statement.

Q. That is the pre-war period?

A. Yes. I don't know that I called it the pre-war period. I think I just called it the period from the end of Mr. Baldwin's improvement program period to the beginning of the war period.

Q. And then the last period that continued to now is known as the War Period? A. Yes, I think I so called it.

Q. During what years of these periods were you an officer of the Missouri Pacific? A. From 1929 to—

Q. You might as well give me the office you held, at the same time.

A. I am not quite sure when I ceased to be an officer, but I think it was either in 1938 or 1939.

Q. You started as an officer in 1929 and you think you continued until 1938 or 1939? A. Yes.

Q. What was your title?

A. As far as the parent company was concerned, for the first few months Assistant to the Chairman of the Board of Directors, and after that Secretary and Treasurer. I was during some portions of this period a director of the company.

Q. You had no connection with the Missouri Pacific prior to 1929, except through your employment with the Denver & Rio Grande? A. That is correct.

Q. When did you start in 1929? A. In February.

Q. For how long were you treasurer?

A. I was treasurer from October 1st, 1929, up until the time I resigned, at the end of my service with the Missouri Pacific.

Q. As treasurer prior to bankruptcy, were you responsible for the annual reports to the stockholders of the company? A. No.

Q. Who was?

A. They were signed by the president, I think, and possibly by the chairman of the board of directors. I am not sure. I think they were prepared by the Chief Accounting Financial Officer, who was Mr. Johnson during most of the time—I think all the time I was associated with the property. I think most of the time he had the title of Vice-President.

Q. Did you have any responsibility at all in regard to the facts and figures contained in those reports? A. No.

Q. And if there was an error that had nothing to do with your part of the Missouri Pacific?

A. That is correct. I think perhaps I should say that the annual reports were ultimately approved by the Board of Directors, but the preparation of them was as I have stated.

Q. And as treasurer, even though you dealt with the financial condition of the company, you had nothing to do with them, and no responsibility?

A. I certainly had no responsibility in connection with them. There may have been occasions when I saw the text, or part of the text, before they were published, with an opportunity to make suggestions, but they were not my responsibility in any way. If somebody asked my advice about a particular part of them, or asked for suggestions in connection with a particular part, but I don't recall specifically what those were, except that I do know that on occasions I would see the text, or part of the text of some of these reports. It was not a regular matter; it was only when somebody wanted to ask me something.

Q. But there was no responsibility on your shoulders as treasurer for any of the content of the report?

A. That is correct.

Q. Mr. Wyer, in setting out these periods you made no reference to the period when Alleghany was in control of the Missouri Pacific, did you?

A. The period when Alleghany was in control was included in these three periods which you mentioned.

Q. But you do not break this up into an Alleghany period? A. No.

Q. You admitted on direct examination, I believe, that in 1930 Alleghany took over control of the Missouri Pacific? A. Yes.

Q. And was in control of the Missouri Pacific from that time until bankruptcy? A. Yes.

Q. And that was public knowledge, was it not?

A. I am sure it was.

Q. Alleghany took over control at what time in 1930?

Mr. McDonald: I am going to object to a continuation along this line, for the reason that the question of taking over control involves a conclusion of the witness. There is no showing as to what he means by "control", and we object to it for that reason.

The Court: Sustained.

Mr. Biggs: If the Court please, he testified on page 1006 of the record that in 1931 Alleghany secured control of the Missouri Pacific.

The Court: I know he did, but there was no objection at the time.

Mr. McDonald: I move to strike that answer given by Mr. Wyer on the page referred to, 1006, and also the prior answers given on this line of questioning with reference to control.

The Court: Sustained.

Mr. Biggs: Q. Was there any change in the Board of Directors of the Missouri Pacific in 1930, Mr. Wyer, at the annual election in 1930? A. Yes.

Q. Who elected directors to the Board of the Missouri Pacific in 1930?

A. The stockholders of the Missouri Pacific.

Q. Who held the majority of stock at that time?

A. Alleghany Corporation.

Q. Who held the majority of stock in 1931?

A. Alleghany Corporation.

Q. In 1932? A. Alleghany.

Q. In 1933? A. Alleghany.

Mr. McConaughy: I object to that last question. It is beyond the period we are interested in here—1933.

The Court: Sustained.

Mr. Biggs: Q. How many directors were elected by Alleghany, holding the majority of stock, in May, 1930?

Mr. McDonald: I object to that question.

The Court: Read the question.

(Last previous question read.)

Mr. McDonald: For the reason that there is no testimony that Alleghany elected any directors, but only the stockholders elected the directors.

Mr. Biggs: The witness testified that Alleghany owned the majority of the stock.

The Court: Overruled. He may answer.

A. All of the stockholders who voted at the meeting elected all of the directors elected. I don't think it is possible to say that Alleghany elected certain directors and other stockholders elected other directors. The votes, I think, were the same, or substantially the same, and for all of the directors alike.

Mr. Biggs: Q. So that holders of a minority of stock of the Missouri Pacific voted in the same manner and for the same directors that a holder of the majority of stock of the Missouri Pacific voted for; is that correct?

A. That is correct.

Q. Was the same condition correct and true in 1931?

A. Yes.

Q. In 1932? A. Yes.

Q. And these directors elected at the annual meeting of May, 1930, were in full control of the Missouri Pacific for that particular year; is that not true?

Mr. McDonald: Our objection is the same on that as to the other matters of control; also the objection that this is not responsive to any interrogation on direct examination.

The Court: Overruled. He may answer.

A. Well, they performed all the functions of a board of directors and exercised the control that a board of directors—

Mr. Biggs: Q. In the period between elections of the Board, the Board has full control of the corporation, is that correct? A. Yes, I think that is correct.

Q. Mr. Wyer, during this cross examination I would like to establish four, instead of three periods. We will have the first period beginning with the Baldwin improvement period, from 1923 to May, 1930, and from May, 1930, until bankruptcy, we will call it Alleghany period, and from bankruptcy up until the war years we will call that pre-war period, and from then on the war period, for the purpose of this cross examination.

Now, in regard to this exhibit 25, who assembled the figures which you have on this exhibit?

A. Well, this exhibit was originally set up in the office of William Wyer and Company, in Newark, and then was sent to St. Louis for check by the Missouri Pacific accounting department. While that may not be true as to some of the years where we didn't have information in Newark, but the design of the exhibit was set up in Newark, and I am sure that a good many of the figures were filled in there and ultimately it was completed and checked by the Missouri Pacific accounting department in St. Louis.

Q. Did you personally check these figures?

A. I did not personally check these figures, no. One of my partners in the firm in Newark handled the setting up of this information after consultation with me, and I was in consultation with him from time to time as the work proceeded, and supervised the form and stated what information should be secured and how it should be set up, and my partner handled the details of it and handled the checking in St. Louis.

Q. Are you willing to accept the figures as accurate and correct? A. I am.

Q. Now, in regard to this foot-note No. 3, a total of $346,328,978., is that figure the total of investment in road and equipment as of June, 1917, or is that at the end of the year?

A. I am pretty sure that is as of May 31, 1917.

Q. That is as of May 31, 1917? A. Yes.

Q. So that, if we add to that figure the $3,641,939. which you show as net of 1917, we then have as of December 31, 1917, or January 1, 1918, the then total of investment in road and equipment; is that correct?

A. I am sure that you would. I would have to check that. There is an account, or was an account, in the Missouri Pacific investment in road and equipment which had to do with adjustments arising out of the reorganization which was completed for May 31, 1917, and I am not just sure how that account was functioning with respect to these items. I would have to check it; then I could answer your question.

Q. Can you do that now?

A. No, I can't do it right now.

Q. Is your partner here, who prepared that report?

A. Yes.

Q. Would he know the answer? A. He might.

Mr. Biggs: I would like to ask Mr. Wyer to find out that figure from his partner if he can.

The Court: What is there to find out?

Mr. Biggs: This Exhibit No. 25 shows a total of investment in road and equipment, as of June 1, 1917, of $346,328,978.—

The Court: When do you want that?

Mr. Biggs: I think he could do it right this minute. He stated his partner is here, who prepared this.

Mr. McConaughy: He can't do it here; his partner can't do it in this room, Your Honor.

Mr. Biggs: Q. The answer is that you do not know at this present time? A. No, I do not.

Q. Mr. Wyer, taking the figure of $346,328,978. which, according to your Exhibit No. 25, was the investment in road and equipment as of June 1, 1917, and adding to that figure the sum of $242,263,107., can you show me where that total will tie in with corresponding items in the balance sheet of the Missouri Pacific, in 1944?

A. I don't know whether that would tie in or not. The same factors would affect that that affected your question about 1917. The account that I mentioned was opened and charges and credits were being made to it, I think probably up until the bankruptcy, and it might affect any of those years between 1917 and 1933, inclusive. I would have to check it out and see if the addition of those two figures would give the balance carried as of December 31, 1944.

Q. Have you got a balance sheet of 1944 with you?

A. No.

Q. Have you got a balance sheet of 1943 with you?

A. No.

Q. Have you any balance sheet of the company here?

A. No.

Q. I will show you the Annual Report to the stockholders of the Missouri Pacific Railroad for the year 1943: Will you add up for me those two amounts, $346,328,978, plus $242,263,107., which is the net charges, less $8,659,118., which are the net charges for 1944?

A. I get, by performing those calculations, $579,932,967.

Q. Can you show me where that total would tie in with the 1943 annual statement?

A. No; I don't know that it would tie in.

Q. So, if I understand you correctly, this Exhibit No. 25 is merely excerpts taken from the books and records of the Missouri Pacific?

A. This Exhibit 25 is what it says it is. I note this, that the total investment in road and equipment as of December 31, 1943, as shown on this balance sheet is $582,832,790., which is about $2,900,000. higher than the figure I got by performing the calculation which you indicate. Now, there is undoubtedly a very good explanation for that, which can be obtained by checking through the calculation that went into Exhibit 25, but I don't know what it is offhand.

Q. Have you any criticism of my suggested calculation so as to determine the amount invested in road and equipment as of December 31, 1943? A. Yes, I have.

Q. As coming from your Exhibit 25? A. Yes, I have.

Q. All right. I am not an accountant, Mr. Wyer, under any circumstances. How would you arrive at that from your Exhibit 25?

A. I say I don't think you can arrive at it from Exhibit 25.

Q. You can't arrive at it from that exhibit?

A. No, I don't think you can check Exhibit 25 into the balance sheet. I stated one reason why I didn't think you could do it, because there was an account in the balance sheet with which adjustments in road and equipment made subsequent to June 1, 1917, and applying it to transactions prior to June 1, 1917, were taken up, and they were taken up without increasing, as I recall it, without increasing the investment in road and equipment as the figures stood on the books at the same time those adjustments were made in the account. I am not sure how that particular account, or several accounts, whichever you call it, was handled in preparing Exhibit 25, and that may be the explanation of the difference. Also, I do not know whether Exhibit 25 and the balance sheet both contain the Missouri Pacific Railroad Corporation in Nebraska. Sometimes there were different figures for the Missouri Pacific, depending upon whether the Nebraska Corporation was included or not. That is a very small part of the Missouri Pacific, for which there are sometimes separate figures maintained. I have no doubt that any differences such as this $2,900,000. in a total of $580,000,000., or about one-half of one per cent. are explained by some such thing as those two possibilities that I mentioned. It would be a case of making an analysis to see what causes it.

Q. The annual report shows a larger amount in R. and E. than your exhibit does?

A. Yes, it does, except that I repeat that this exhibit may not necessarily check in, or be expected to check in, with the annual report to the stockholders.

Q. I understood from your statement that sometimes the Missouri Pacific of Nebraska is omitted in making those figures that have come out in the annual statement; is that correct?

A. No, I didn't say that. I say that sometimes Missouri Pacific figures omit the Nebraska corporation. I don't know whether that was done in Exhibit 25, or in some years that went into Exhibit 25, or not. There are a number of things of that sort that would have to be checked

to see just what caused the difference, but I know that there are things of that sort in the account of the Missouri Pacific and on their general books, which might account for differences of the kind that you have pointed out. I can't tell you exactly what they are, but I have had plenty of experience in checking figures of this sort where this kind of difference exists, and I know that those are two of the factors that have in the past explained such differences. Now, whether they are the factors here or whether there are other factors, I do not know.

Q. So that I can understand you, Mr. Wyer: I can not take the annual statements of the Missouri Pacific and reconcile them with this Exhibit No. 25; is that correct?

Mr. McConaughy: You mean annual report?

A. I don't think you can by yourself, without help from the Missouri Pacific Accounting Department, but I think it can be done with their assistance.

I might say that Exhibit 25 was supposed to reflect the actual expenditures during these respective periods, and you understand that in accounts you are frequently making adjustments that apply to previous periods, or investments that don't represent actual expenditures. I don't know whether or not those are in here, but there are probably a dozen things that might account for this difference and I am quite sure if you are interested it could be checked by the Missouri Pacific Accounting Department and the cause indicated.

Q. But from a layman standpoint, looking at Exhibit 25, or from a Court standpoint, looking at Exhibit 25, is there not only one possible interpretation of Exhibit 25, that if you added this $242,000,000. to $346,000,000. you have a total investment in road and equipment; is not that true—just looking at Exhibit 25 and leaving out all the expert accounting; is that correct?

A. I don't think so, and I think any layman that tried to delve into the intricacies of railroad balance sheets is taking his life in his hands, to start with.

Q. All I am saying is this: This is an exhibit, I am looking at two totals, one of them which you have already testified was the beginning figure, and I am looking at another

total which is the total of the net charges to road and equipment: Now, as a layman, is there but one understanding that I can make by looking at those two figures and adding them together, that you have the total investment in road and equipment, that figure would coincide with the published statement of the company as to what the road and equipment investment is; as a layman, is not that true?

A. No, I don't think that follows at all.

Q. Please explain it to me.

A. I have explained it to you in quite a series of answers, but—

Q. Let me see that I understand your explanation.

A. Let me finish my reply.

Q. All right.

A. I don't think there is any more that can be added to the explanation that I have given. I have explained several reasons why they don't check and might not be expected to check, and a layman in dealing with this sort of thing I don't think is justified in making assumptions of the kind that you apparently want a layman to make.

Q. As I understand you, your explanation is that it would take an expert railroad accountant to understand and interpret your Exhibit 25, and that such an expert railroad accountant would understand the difference between your Exhibit 25 and the annual statement of the company. A. No; I haven't made any such statement.

Q. All right.

The Witness: You are talking about reconciling Exhibit 25 with the annual report to the stockholders.

Q. That is right.

A. I am saying that a layman would not expect to be able to do that. I didn't make any statement about a layman not being able to understand Exhibit 25. I think Exhibit 25 is quite clear on its face. I think anybody with reasonable intelligence could understand it, if he reads what I said in connection with it, but when it comes to reconciling that exhibit with a series of annual reports to the stockholders over a period of twenty-seven years, with all the adjustments and intricacies that go into railroad balance sheet accounts, I don't think a layman can expect

to understand that and I don't think he ought to expect to understand it, and I don't think a railroad expert accountant could understand it unless he had a chance to check it through with the men who keep the books.

Q. As a result of that explanation, let me see if I understand you: A layman can understand Exhibit 25, and my layman's understanding of the addition of $242,000,000. and $346,000,000. making $588,000,000., or whatever the exact amount is, is the correct layman's interpretation—

The Court: Not a layman's, it is a correct interpretation—

Mr. Biggs: Q. Is a correct interpretation of Exhibit 25, and that total shows the investment in road and equipment of the Missouri Pacific; is that correct? A. No.

Q. If I add those two figures together, the total that I arrive at is not a correct figure showing the investment in road and equipment as of December 31, 1944, is that right?

A. I think that is right. I don't think it would be expected to be.

Q. Is there anything on this exhibit that would indicate to the Court, or is there anything in your direct examination that would indicate to the Court, that such a computation would not show the total investment in road and equipment?

A. I don't think I discussed such a computation in any way in my direct examination, or on the exhibit. I didn't make it on the exhibit. This exhibit merely shows the actual expenditures during this period. It doesn't purport to show what the investment in road and equipment was at the end of the period, or during any of the intervening years.

Q. As I understand you then, Exhibit 25 does not purport to show what the investment in road and equipment was at any time between June, 1927, and to date?

A. No; it simply shows the expenditures that were chargeable to road and equipment during each of the years between those dates.

Q. What do you say the investment is that you—

The Witness: The investment is a total of expenditures, everything that has gone before, and it may include other

things besides actual expenditures. You would have to check through the books in order to reconcile the two bases. They may be very close, that is true, but they would not check out to the last dollar, and I don't think they can be expected to.

Q. I think we can agree on this statement, Mr. Wyer, that Exhibit 25 is merely excerpts from the books and records of the Missouri Pacific and it is not a complete statement which can be tied in and reconciled with the annual reports of the company; is that correct?

A. I think that is true. I think that is frequently true of most exhibits that are presented in connection with railroad accounts or figures of one sort and another. You can't possibly state all the books on one exhibit. Every exhibit has to be excerpts.

Mr. Biggs: I move that all that portion of his answer after the statement "That is true" be stricken.

The Court: Overruled.

Mr. Biggs: Then may we have a recess?

The Court: Announce a five-minute recess.

(After the recess the hearing was resumed as follows:)

Q. Mr. Wyer, what was the long term debt and the outstanding bills or notes payable representing temporary borrowings on December 31, 1922, just before the beginning of the Baldwin period?

A. I don't know that I know that.

Mr. McConaughy: I object to that question, because it does not specify any corporation or group of corporations.

Mr. Biggs: Missouri Pacific, I am talking about the Missouri Pacific.

A. I don't carry that figure in my head.

Q. Do you know what the same figures were on December 31, 1929, which was just prior to the beginning of what I am denominating as the Alleghany period?

A. No, I do not.

Q. Have you got the 1929 annual report or annual statement? A. No.

Q. I show you the 1929 annual report and ask you what that figure is. (Handing the document to the witness.)

Mr. McDonald: If the Court please, to shorten this, there is a stipulation in the record that all annual reports may be referred to in briefs. It seems useless to take time to cross examine the witness about that.

Mr. Biggs: I am trying to arrive at some figures.

The Court: You are what?

Mr. Biggs: I am trying to get some figures before the Court.

Mr. McDonald: Can't you state the figures from the report? I mean, there is a stipulation in the record on that.

The Court: Couldn't you shorten the time by following that suggestion? If, by stipulation, you can state the figures from the reports.

Mr. Biggs: Frankly, Your Honor, I have not got them exactly. We have been working this thing out. We have not got them down to the last—I have them roughly, only.

The Witness: What was the question, please?

(The preceding questions, following recess, were repeated by the reporter.)

A. The figures for long term debt, as shown in the annual report to stockholders, for December 31, 1929, were $372,195,520.

Q. 372 million?

A. —195,520 dollars. But I would like to point out that that was not just prior to the beginning of the Allegheny period, because the Allegheny period, as you designated it, did not start until May, 1930.

Q. Well, for the purposes of this cross examination, while you are quite correct in your statement that technically it did not start until May, 1930, I am starting it as of January 1st.

Mr. McDonald: Well, I object to his designating a certain period which he has talked of as the Allegheny period, when in the evidence there is no evidence that Allegheny

had any interest except as a stockholder, and the witness has stated that the period selected by Mr. Biggs does not even correspond with the period within which Allegheny may or may not have voted its stock. I object to his selecting a period and using the term, Allegheny being a party to this suit.

The Court: Objection sustained.

Mr. Biggs: If Your Honor please, I have, by testimony of this witness, shown that Allegheny controlled the Missouri Pacific between those periods. If the witness, for the purpose of his testimony, designated certain periods—

The Court: I think you will get a lot of confusion here, referring to periods, and there have been different periods, you have taken different periods from those that have been suggested by him.

Mr. Biggs: I am not bound by their periods, am I?

The Court: We have two or three different Allegheny periods and Baldwin periods, and you better find some other way. It will only add to the confusion.

Mr. Biggs: If Your Honor please, then it is going to be necessary every time to set out from 1921 to 1929 and 1929 to 1933, if you want me to do it that way.

The Court: Do it that way. Not apt to be half so confusing as the other.

Q. Well, that was 372 million and some odd dollars, is that correct? A. Yes.

Q. That was the long term debt, plus short term debt, I mean of the Missouri Pacific, as of December 31, 1929?

A. Yes. I do not believe there was any short term debt at that particular date.

Mr. Biggs: If Your Honor please, I asked the witness the same question in regard to December 31, 1922, and he did not have any balance sheet, and was, therefore, unable to answer the question. I have asked Mr. Peet to secure for me the 1922 annual statement, but in the interim period and subject to change, if the annual statement proves my

figure incorrect, let us assume during this examination that Mr. Wyer would have testified that the long term debt and short term loans on December 31, 1922 amounted to approximately 253 million dollars.

Mr. McConaughy: Where do you get the figure, Mr. Biggs?

Mr. Biggs: From my notes.

Mr. McConaughy: I know, but where did you get it, where was it secured from?

Mr. Biggs: From the annual statement.

Mr. McConaughy: Your notes came from the annual statement?

Mr. Biggs: But I did not have the annual statement recently—they have had some late figures—but the annual statement will be here very shortly.

Mr. McConaughy: I just want to know—you feel pretty sure those figures are right?

Mr. Biggs: I think it is right, Mr. McConaughy, and I expect to be able to verify it in the next ten or fifteen minutes. Now, if the Court wishes to adjourn in the interim—

The Court: Adjourn for how long?

Mr. Biggs: There is no need of it, if Your Honor please, unless there is some question about my using that figure.

Mr. McDonald: We have no objection.

The Court: I hoped you would get through this afternoon. It will be a problem now.

Mr. Biggs: I am afraid not, Your Honor.

Q. Now, Mr. Wyer, can you tell me what are the gross additions to the property accounts of the Missouri Pacific during the years, 1923 to 1929, inclusive, as shown by your Exhibit No. 25?

A. That will require quite a little calculation here.

(The witness makes a calculation.)

I make it approximately 176 million dollars. That is to

the Missouri Pacific, excluding the Nebraska Corporation. I have ascertained during the recess that this Exhibit No. 25 does not include the Nebraska Corporation.

Q. Your Exhibit No. 25 does not include the Nebraska Corporation? A. That is correct.

Q. 176 million dollars, that is the gross additions and betterments?

A. Yes. That is only to investment in road and equipment. Now, you said physical property. Of course, there is other physical property besides that.

Q. That is the gross investment in road and equipment?

A. Which I don't have a record of here.

Q. Gross investment in road and equipment from December 31, 1922 to December 31, 1929, is that correct?

A. That is the increase in investment—no—I will say it this way: that is the gross expenditures chargeable to investment in road and equipment between those two dates.

Q. Now, will that figure of 176 million tie in with the annual reports? A. No.

Q. It won't? Do you have what the annual reports would show for that period?

A. The annual reports don't show any figures for that period, for that item.

Q. Do I understand you that the annual reports do not show what the gross expenditures for road and equipment are? A. I believe that is correct, they do not show it.

Q. What do they show—the net, only?

A. They show the net only, I believe.

Mr. McConaughy: Mr. Biggs, when you refer to annual reports, you mean the annual reports of Missouri Pacific?

Mr. Biggs: That is correct.

Mr. McConaughy: Railroad Company to stockholders?

Mr. Biggs: That is correct.

Q. All right. Mr. Wyer, what, according to your Exhibit No. 25, would be the net figure for road and equipment during that period?

A. Approximately 142 million dolars would be the net expenditures chargeable to investment in road and equipment during the period in question, for the Missouri Pacific Railroad Company, excluding the Nebraska Corporation.

Q. Excluding the Nebraska Corporation. Now, will that figure tie in with the annual reports?

A. Which annual report?

Q. With the annual reports of the Missouri Pacific Railroad? A. Which one?

Q. The reports between 1922 and 1929, inclusive.

A. Annual reports to whom?

Q. The stockholder. A. No, it will not.

Q. Mr. Wyer, you have stated in the court, in your direct examination, that due to your position, first, as Assistant to the Chairman of the Board, Mr. Williams, whose function was the financing of the road, and you have stated that you have attended meetings of the Board, even though you were not a member, stated that you were therefore qualified to give and testify as to what was in the minds of the Directors of the Missouri Pacific in regard to policy and other matters which are now the subject of this inquiry, have you not?

A. I thought my testimony along that line referred to the Directors of the New Orleans, Texas and Mexico. I think probably I was just as well qualified with respect to the Missouri Pacific as I was to the New Orleans, Texas and Mexico, but I don't believe I said so in my direct examination.

Q. Also, Mr. Wyer, is it not true that the annual reports of the Missouri Pacific Railroad Company to the stockholders, and which are published, public documents, are the principal source of information upon which the general public form its opinion of the railroad's condition, isn't that true?

A. No; I don't believe so. They are an important source, but I don't believe I would call them the principal source.

Q. And does not the public rely upon these reports for the progress and management of the railroad, and as the best evidence of what the management—and are not also these reports the best evidence of what the management wishes to show to the public as to the condition of the railroad and what is in the minds of the management?

A. Would you read the question, please?

Mr. Biggs: I will withdraw that and reframe it. I think it is a little complex.

Q. Aren't these annual reports the best evidence of what the management wishes the public to know?

Mr. McConaughy: Wait a moment. Which annual reports do you refer to?

A. The annual reports of the Missouri Pacific Railroad Company.

The Court: You mean to the stockholders?

Mr. Briggs: To the stockholders.

A. Well, I expect that is so.

Q. And aren't they also—aren't they, therefore, the best evidence of what was in the minds of the Directors at that particular time when they were published?

A. I don't know that that necessarily follows.

Q. If this is so, Mr. Wyer, why does your Exhibit No. 25 not tie in with these annual reports?

A. I have already given you some of the reasons why it may not tie in, one of which, I explained, was the fact that the Nebraska Corporation is included in the annual reports, and the annual reports to the stockholders so state. Exhibit No. 25 is Missouri Pacific Railroad Company only, so states on the top, and does not include the Nebraska Corporation, so I know that we have that one difference there. I don't know offhand of any others, but until I check it out, I would want to reserve judgment on whether with that exception, it would agree. So far as I know, it would agree, with that exception.

Q. I will show you the 1922 annual report, and if you remember, I stated that it was my understanding that the long and short term debt as of December 31, 1922 amounted to approximately 253 million dollars. Is that correct, according to the 1922 annual report of the Missouri Pacific Railroad to the stockholders?

A. This shows the long term debt at that time $253,044,080.

Q. So I was reasonably close to being correct? A. Yes.

Q. Will you tell us from that 1922 report what was the net investment in road and equipment?

The Court: This is all here. Can't it all be set out in briefs, not have the witness testify to all these things?

Mr. Biggs: I am afraid, Your Honor. (Pause.)

The Witness: Am I waiting for you, or are you waiting for me?

Mr. Biggs: I am waiting for you.

The Witness: The investment in road and equipment, as of December 31, 1922, for the Missouri Pacific Railroad Company and—I don't find whether this report includes the Nebraska Corporation or not at that time—was $383,270,573.78.

Q. 383 million? A. 270,573 dollars, 78 cents.

Q. Well, we will omit the lower figures. Now, you have testified, according to this Exhibit No. 25, that the gross additions amounted to 165 million—176 million between that period and December 31, 1929? A. Yes.

Q. And you have also testified that there is no way, from an examination of those annual reports, to determine what the gross investment in road and equipment would be, as shown here in the annual report? A. Yes.

Q. Will you tell me what the gross amount is? You stated that you can make such a calculation.

A. I said—I had stated that you could not ascertain it from the annual reports.

Q. Oh, you cannot? Excuse me. I did not understand your answer. By taking these annual reports from 1922—I have them all here—can you give me what the total charges, depreciation plus the—can you give me what the total amount of charge-off in regard to from assets of Missouri Pacific were for that period?

Mr. McConaughy: May I have the last question read? I want to make an objection to it, Your Honor.

The Court: Read the question, please.

(The question was repeated by the reporter.)

Mr. McConaughy: I have no objection to that question.

The Witness: I don't understand the question.

Mr. Biggs: If Your Honor please, I think it would expedite the matter if, instead of trying to get this information in this form, if we should adjourn now and I would have it all worked out by tomorrow morning.

The Court: Well, it struck me for some time it would expedite it if you would [took] some other method of trying to get it. I had hoped that there was going to be an end today. How long do you think it is going to take then, Mr. Biggs, have you any idea?

Mr. Biggs: I think I can give you—if we can work this thing up and get it in quickly, I don't think it will take so long.

The Court: I don't think anything can be done quickly around here.

Mr. McDonald: It seems to me the thing was solved, Your Honor. I can give the Court the page record on the stipulation. The stipulation took place at the hearing before the Court on the Plan in 1940. That record was made a part of this record on the first day of the hearings in January, and the stipulation provided that any counsel could, in briefs or in arguments, refer to the annual reports of the Missouri Pacific to its stockholders, and I take it that stipulation is still binding.

Mr. Biggs: But this is cross examination of the witness and after developing these facts, I think it would probably be a lot quicker, if I have them and then introduce them, subject to check, rather than do it this way.

The Court: You are asking me to adjourn at this time? It is thirty-five or forty minutes before the usual time of adjournment. How much time are you going to save, do you think?

Mr. Biggs: It would save probably a couple of hours.

The Court: I have other matters. I would like to have some idea when this present hearing is going to end.

Mr. Biggs: Your Honor, I think up to this time I have been very expeditious, so to speak, at least as far as the hearings are concerned. I am perfectly aware that Your Honor was very nice in allowing me this period of time to go over Mr. Wyer's testimony. During the trial of this case, there has been no delay on my part, and I think that is—

Mr. McConaughy: I am not making any complaint.

The Court: No, the Court is trying to get information. I have other matters, and I always like to know how long.

Mr. Biggs: This is a terribly complicated matter.

The Court: Haven't you any idea how many more witnesses you are going to have, or how long it is going to take?

Mr. Biggs: Outside of a very short examination of Mr. Eckert—

Mr. McConaughy: Can't you examine Mr. Eckert now and suspend with Mr. Wyer?

Mr. Biggs: I have been working completely on Wyer's matter.

Mr. McConaughy: So you have to still prepare for Mr. Eckert?

Mr. Biggs: Yes. I don't think that will take any time.

Mr. McConaughy: You are not prepared to examine him now?

The Court: How long is it going to take to finish with Mr. Wyer? An hour, a day, or a week, or what?

Mr. Biggs: I certainly don't think it will take over a day, and I don't believe it will take that long, but I don't want to make any definite commitment.

The Court: I am just trying to get an idea, is all. I am not trying to commit you to anything. There are other matters I want to take up, and I don't know how to arrange. You think it will save time if an adjournment is taken now?

Mr. Biggs: Yes, Your Honor.

The Court: Announce an adjournment until ten o'clock.

Mr. Biggs: Would it be all right to adjourn this hearing until 10:30? You usually have other matters on the docket?

The Court: I don't believe we have.

Mr. Biggs: That is all right.

The Court: Have nothing on the docket in the morning except the Frisco Railroad. I don't think that will take five minutes.

Adjourned at 4:25 P. M, March 22, 1945, until 10:00 A. M., March 23, 1945.

Met, pursuant to adjournment as above, on March 23, 1945, at ten o'clock A. M.

Appearances: Same as heretofore noted.

The Court: You may proceed.

Mr. Biggs: This is off the record.

(Mr. Biggs here made a statement to the Court off the record.)

Cross Examination of William Wyer
Resumed by Mr. Biggs:

Q. Mr. Wyer, when the hearing terminated last night I was endeavoring to elicit from you certain factual matters as disclosed by the annual reports which MOP made to its stockholders. Previous to that I had inquired of you as to whether there was any tie in between Exhibit 25 and these annual reports and you had testified there was none. I will call your attention to the fact that these annual reports contain information covering the matters set out in your Exhibit 25, in almost identical form, and that the figures in the annual reports do tie in with the balance sheet.

Will you tell me why you did not make your Exhibit 25 from these easily accessible figures, so that the difficulties I experienced yesterday might have been avoided?

A. As I explained to you yesterday, the annual reports do not show gross expenditures chargeable to additions and betterments to road and equipment, so that your statements on which your question is based are incorrect.

Q. It was developed in the testimony yesterday that from December 31, 1922, to the end of 1929, there had been an increase in the aggregate of long and short term debt, between those dates, of about 120 million dollars, and during the same period there had been an increase of about 176 million dollars in gross additions and betterments. Does the necessity for borrowing 120 million dollars to make additions and betterments of 176 million dollars indicate that the Missouri Pacific was placing so large a debt on these improvements as to make its position perilous in any period of declining earnings?

A. Well, that is a pretty big question. As it turned out, I think the answer was "Yes," but, of course, that was using hindsight instead of foresight. There were a lot of elements that entered into that picture. One of the most important was that in 1917, when the Missouri Pacific was reorganized, its capital structure was such that no additional preferred stock could be issued without the unanimous consent of all preferred stockholders. So the Missouri Pacific, if it was going to expand, had to expand through the contraction of debt. The Missouri Pacific had no choice as to what it did. Obviously, you couldn't get the unanimous consent of preferred stockholders to issue additional stock. So, if the Missouri Pacific was to carry out its program there was only one way to do it.

The people in charge of the Missouri Pacific during this period didn't think that they were imperiling the position, although they made efforts shortly after the period that we were discussing yesterday to try and revise the capital structure in such a way that stock could be issued. Those efforts were not successful, but they, themselves, realized that it would be very desirable to have the increased capitalization represented by some stock.

There is this, also, to be considered: I think it was probably not until—I will say 1928 and 1929, that market conditions would have permitted the sale of preferred stock at par. Now, the Interstate Commerce Commission would not permit railroads to sell stock at less than par, so that when the market conditions didn't permit the sale of stock at less than par, obviously there was no use in trying to work out an arrangement whereby they could finance with

the sale of stock. I think it was not until 1928, or possibly 1929, that the Missouri Pacific would have been in a position, based on the market price of its preferred stock, to finance through the sale of stock. So, really, except for one relatively brief period of perhaps a couple of years—I would have to refer to the record to see just how long it was, but I think probably two years was the approximate length of the period—the Missouri Pacific didn't have any choice, and when they did have a choice as far as market conditions were concerned then it was confronted with the restrictions of this capital setup and attempts were made to change those restrictions, without success.

Of course, this 120 million that you talk about, from 1922 to 1929, this alone was not what put the Missouri Pacific in bankruptcy, as far as the size of its debt was concerned. There were substantial increases after 1929 and it was the accumulated effect of all of them. But I think that gives you about as good a summary of the financial proposition that the management of the Missouri Pacific was up against during those years as can be given.

There is one more factor I should mention and that is that the dividends and preferred stock were cumulative beginning with June 1, 1917, so that as it got up, say 1929, you had about fifty dollars a share accumulated back dividends on preferred stock, and that was an added obstacle, and a very serious one, to resetting the capital structure so that financing could be performed with stock.

Q. Isn't it true, Mr. Wyer, that prior to 1929 the Missouri Pacific couldn't have sold any additional preferred stock at par, even if there was no restriction against such a sale?

A. I think that that is probably true. I would want to check the markets to see just when it would have become possible to sell preferred stock at par, but I think it is very probable that that point wasn't reached until late 1928, or sometime in 1929.

Q. As I understand it from your statement, there had not been any payment of dividends on the preferred stock outstanding until 1928?

A. I didn't say so, but that is correct.

Q. I thought you said so.

A. Of course, I would like to explain there, to show how these things interlace with each other, the very fact that the Missouri Pacific was not paying any dividends on its preferred stock from 1917 to 1928, or until the end of 1928, permitted these back dividends to accumulate on the preferred and made the job of financing with the preferred when the opportunity came just that much more difficult. They took the money and put it back in the property during that period, but at the same time that fact made their financing job much more difficult by doing that, when the opportunity to finance with stock presented itself, as far as the market was concerned.

Q. During this same period there were charges to retirement of about thirty million dollars: Will you tell me if I am correct in understanding that these retirement charges occurred because inadequate depreciation has not been charged to operations in preceding years?

Mr. McConaughy: That is objected to. It is not proper cross examination. There is nothing on direct examination that bore at all on depreciation. Your Honor will recall that there is a part of the objections here that asserts something about depreciation policies being improper, and in their case they made no point about depreciation policies whatever, and I think it is improper to drag it in here through cross examination. It is too late to raise the point.

Mr. Biggs: One of the points in this case is the dire need of the Missouri Pacific for income and this is part of the preliminaries—

Mr. McConaughy: That was a part of his affirmative case. If he passed up the opportunity to prove it then it is too late to do it now on cross examination.

The Court: Read the question.

(Last previous question read to the Court.)

The Court: He may answer.

A. Are we talking about the period December 31, 1922 to December 31, 1929?

Mr. Biggs: That is correct.

A. What retirements are we talking about?

Q. Thirty million. A. I know, but what property?

Q. As shown by the books of the company during that period.

A. That is too indefinite. I want to know what property you have in mind. I don't know that the books show retirements of thirty million. I haven't anything to identify the kind of property you are talking about.

Q. I will be glad to give you the annual reports during that period, and ask you what the gross retirement of property during that period amounted to.

A. Are you talking about all property retired during that period?

Q. That is correct.

A. Without limiting it to one particular kind of property?

Q. That is right.

A. I don't understand that part of your question which asks if this indicates inadequate depreciation had not been charged. What do you mean by that?

Q. There was a depreciation reserve set up on the books of the company, is that right? A. Yes.

Q. And if that depreciation reserve is adequate, when a box car is retired because of a wreck, or for any other reason, obsolescence or any other reason, the value of that box car, on the books of the company, at that particular time is charged against that depreciation reserve, is not that true?

A. No, that has not anything to do with the adequacy of the depreciation charge. The box car may have been destroyed after it had only been in operation two years and the charge to the depreciation reserve might not have been enough to cover the retirement of that car. Obviously, it would not have been, but nobody can say the depreciation reserve was not adequate. It was adequate as far as anybody could foresee, and just the mere fact that when a car is retired the depreciation reserve doesn't have enough in it to cover depends on a lot of things, and it doesn't necessarily indicate that the reserve is not adequate.

Q. Let us take a proposition of a car that is forty years old, the same example for the car that is forty years old.

A. The mere fact that a car is forty years old doesn't even then imply that the reserve is necessarily inadequate.

Q. I understand that you are unable—you do not understand the question; is that correct?

A. I don't understand what you mean by asking whether this indicates that inadequate depreciation has not been charged. It seems to me that the terms are not consistent, they conflict with each other. I don't know how you can fail to charge inadequate depreciation. I don't understand what you mean.

Q. Isn't it a fact, Mr. Wyer, that if the charges to retirement are in a very substantial amount, that that would indicate that the depreciation reserve was inadequate?

A. No, not at all.

Q. It wouldn't indicate that fact at all? A. Not at all.

Q. So that that is all I have asked you in this question.

A. That was not your original question. I can answer the last question, but I can't answer the first one.

Q. Now, during this same period there were charges to retirement of about thirty million dollars: Will you tell me if I am correct in understanding that these retirement charges occurred because inadequate depreciation had not been charged to operations in the preceding period?

A. I don't understand the question and I can't answer it until I understand it.

Q. Am I correct in understanding from your statement that there is no relation between charges to retirement and depreciation reserve?

A. No; the only thing you can understand from my statement is that you have asked an unintelligible question.

Q. What is the relation, then, between charges to retirement and depreciation reserve?

A. Well, the relation is this, generally speaking, that one is a substitute for the other. You can have your accounting on such a basis that all of your retirements are covered by depreciation, or you can have it on the basis that your retirements are covered partly by depreciation and partly by retirement charges.

Now, the Interstate Commerce Commission has permitted railroads for many years to operate on a combination of retirement and depreciation charges, to account for their retirement of property, and consequently the railroads have no way, except through retirement charges, of accounting for their retirement of property. It is accepted by the Interstate Commerce Commission and it is so provided in the accounting regulations.

Q. Do I understand, then, from your answer that it was the policy of the Missouri Pacific during that period to take care of retirements partially by setting up depreciation reserve and partially by charges to retirements?

A. That is correct. That was the only way that was possible under the Interstate Commerce Commission regulations. All railroads did that during this period.

Q. You did not try to take care of your retirements solely through depreciation reserve?

A. Of course not; that would have been impossible under Interstate Commerce Commission regulations. We would have been violating the instructions of the Commission if we tried to do that.

Q. And you did not try to set up what you would consider an adequate depreciation reserve to take care of all retirements?

A. I didn't say that. We set up what we thought was entirely adequate depreciation reserve, in so far as we were permitted by the Interstate Commerce Commission. The Interstate Commerce Commission requirements do not permit a railroad, or did not at that time, permit a railroad to cover all of its retirements through depreciation.

Q. So, as I understand you, Mr. Wyer, you were not permitted by the Interstate Commerce Commission to set up an adequate depreciation reserve for retirements?

A. No, I never said that. The Interstate Commerce Commission permitted and required you to set up certain depreciation charges. The rates charged were approved by the Commission, and they were approved as the result of detailed studies submitted by the railroads to the Commission, and the Commission analyzed those studies and either approved the rates recommended or suggested other rates. Both the railroads and the Commission always felt

that the rates were adequate. That was the reason for devoting such great attention to the matter, but it was not the intention of the Commission that all of the railroad retirements would be covered by its depreciation reserve. It was the intention that some of the retirements would be covered through the reserve and other retirements would be covered through retirement charges, and we felt the combination was adequate to take care of everything. The depreciation was adequate for the retirements that were to be taken care of in the depreciation and the retirement charges were adequate as to retirements which would be taken care of through retirement charges. The combination of the two was adequate for retirement of all property. So, there is no question of inadequacy involved in that policy.

Q. Am I correct in understanding that the usual justification for taking care of retirements, both out of depreciation reserve and out of charges to retirement is that if the charge, when it become inevitable because the property has actually been retired, were made against earnings in the year of the retirement, earnings for that year would be distorted, and is it not equally true to say that these charges indicate the extent to which earnings have been distorted in the preceding years?

A. I don't believe I understand it. It seems like a pretty confused question to me.

Q. Well, Mr. Wyer, you do not understand the question?

A. I don't think I do.

Q. I will state a simple illustration: Here is X company that sets up a depreciation reserve of ten thousand dollars in 1920, 1921, and 1922, which makes a total for the three years of thirty thousand dollars. In 1922, as the result of [absolescence], it has to charge off equipment of sixty thousand dollars, and let us assume that this particular kind of equipment became [absolescent] as the result of use during that three-year period: Would you not say that the earnings of this X company had been distorted in the year 1920? A. Is X company a common carrier?

Q. I don't care whether it is a common carrier or manufacturing corporation, or whatever it is.

A. Then I can not answer your question, because the

companies operate under different accounting systems, and common carriers have their accounting regulated by governmental bodies. I have got to know a good deal more about X company and its past history and its equipment and character of its operation than is covered in your question.

Q. You are not an expert accountant?

A. I never held myself out to be.

Q. You are testifying in this case as an expert accountant? A. I haven't said so.

The Court: He disclaimed that yesterday.

Mr. Briggs: He disclaimed he had any formal knowledge of accounting.

Q. You are unable to answer that question?

A. Not on such an indefinite basis.

Q. On the information submitted to you? A. No.

Q. Did you ever see any estimates during the years 1923 to 1929 of the amount of the concealed obsolescence of the Missouri Pacific, that had not been covered either by depreciation or direct charges to retirement?

The Court: Read the question, please.

(Last previous question read.)

Mr. Biggs: I think that question ought to be reframed.

Mr. McConaughy: I think so.

Mr. Biggs: Q. Did you ever see any estimates, during the 1923-1929 period, of the amount of concealed obsolescence of Missouri Pacific, that had not been covered either by depreciation or direct charges to retirement?

Mr. McConaughy: I object to that question. There has been no proof of any concealed obsolescence.

The Court: Sustained.

Mr. Biggs: This man is thoroughly familiar with the Missouri Pacific and in a position to know if there was any.

The Court: You did not ask him that.

Read the question.

(Last previous question read.)

Mr. Biggs: Your ruling stands?

The Court: Yes.

Mr. Biggs: Q. During the 1923-1929 period was there any concealed obsolescence that had not been covered either by depreciation or direct charges to retirement?

A. I do not believe so.

Q. During the 1930 to 1932 period, the same question?

A. I do not know of any during that period, either.

Q. During the period subsequent to 1932 to date?

A. No, I don't know of any.

Q. You know of none? A. I do not.

Q. There is no way, is there, Mr. Wyer, in which charges to surplus can be made in any one year in excess of earnings of that year, without reducing the surplus? A. Yes.

Q. Will you explain?

A. You also have credits that are made to surplus, that don't come from earnings. In fact, if you had any credits at all which were to be made to the surplus during a given year the charges to surplus in excess of earnings would not reduce the surplus to the extent that they were offset by the credits that did not arise from earnings.

Q. Let us assume there were no credits—

A. If there were no credits except earnings, obviously any charges in excess of earnings would reduce the surplus.

Q. Is it not true that when a management is anxious to show earnings, or to pay dividends, it becomes more reluctant to make these adjustments no matter how necessary they really may be?

A. What adjustments are you talking about?

Q. Charges to surplus.

A. No, I don't think that is a fact at all.

Q. That is not a fact?

A. No; I think it would be just the opposite. If a management had charges to make they would much rather make them to surplus, under those circumstances, than run them through earnings.

Q. Your Exhibit 25 does not contain any information covering the company's income account and you made, so far as I remember, only one allusion to earnings in the course of your testimony described as background, and

that was a parenthetical statement to the general effect that money had been ploughed back into the property during the period in which dividends were not being paid. Is it not correct to state that during the 1923-1929 period dividends amounting to $6,559,234. were paid to preferred stockholders? A. What company are you talking about?

Q. Missouri Pacific.

A. And the period is 1923 to 1929, inclusive?

Q. That is right.

A. And the amount about six and a half million?

Q. I am not asking about the cents part of it; six and a half million.

A. Well, that might be a little high, but it would not be far off from that. Dividends paid in 1928 and 1929—I think that came pretty close to that probably, and that may be a high figure.

Q. Your dividend for one year was about $3,750,000?

A. $3,500,000. was the regular dividend for one year. The dividends started in the last quarter of 1928, and there was also an extra dividend of one and a half per cent. paid in 1928. I don't believe the extra was paid in 1929. I am not certain of that.

Q. But I am pretty close to accurate in stating—would you care to check that?

A. No, that is close enough; it is not far off.

Q. I am not trying to tie you down to anything but round figures, Mr. Wyer. A. That is close enough.

Q. I have made a round figure calculation of the net income transferred to surplus during the 1923-1929 period, and it appeared to be approximately 49 million dollars. During the same period there were direct charges to surplus amounting to about $14,500,000. This leaves a balance of about $34,500,000. Taking out the $6,500,000. of dividends there was really just about enough to offset the retirement charges in your schedule for that period?

Mr. McConaughy: Which schedule do you specify?

Mr. Biggs: 25.

A. What is the question?

Mr. Biggs: Q. Is that approximately correct?

A. No. In the first place, the retirement charges that you are talking about didn't require offsetting. They were either made to surplus and included in the 14 million dollars that you mentioned—I am now accepting your figures without checking them—or they were charged to operating expenses and had already been deducted. Before determining the earnings which are credited to surplus there are retirement charges that require offsetting but they have already been offset before arriving at the final figures. In addition, your figures don't say anything of miscellaneous credits to surplus during the period. They would be properly included in the calculation. You mentioned fourteen million miscellaneous charges, but there were also miscellaneous credits on the other side of the surplus account, that you haven't said anything about.

Q. Assuming that these retirement charges are not included in the $14,500,000. which are direct charges to surplus, then, as I understand from your answer, I am in error in an amount equal to the credits to surplus during that period?

A. If you want to assume something that is not so, that is correct, but I told you definitely that these retirements are included either in the fourteen million you mentioned or in operating expenses, and in either case they are offset and don't require offsetting at the time we get to the calculation which you are making.

Q. Do I understand from you that part of this thirty million shown in your Exhibit 25 is contained in direct charges to surplus? A. Yes; I have no doubt of it.

Q. Is there any way for you to tell me how much of that thirty million would be in that?

A. Not offhand. I can determine. During this period—I think during all of this period, although I would want to check that to be absolutely certain, retirements were, under the accounting specifications of the Commission, charged partly to operating expenses and partly to surplus or profit and loss, depending upon the character of the retirement. So, undoubtedly, some of that thirty million was included in the fourteen million of charges to surplus or profit and loss during this period.

Q. During the noon recess would you be able to find out

for me how much would be included in this $14,500,000. charges to surplus and how much the credit to surplus amounted to during this 1923-1929 period?

Mr. McConaughy: I think Mr. Biggs ought to explain to the Court what he wants that information for. I am at a loss to understand what this is getting at. It doesn't seem to me to be pertinent or proper cross-examination at all.

The Court: What is the purpose, Mr. Biggs, of this?

Mr. Biggs: The purpose of pursuing this line of investigation is this, Your Honor: It is part of the painting of this picture of the financial need of the Missouri Pacific. In effect, this line of questions shows there was no income—I mean by "No income" practically no income, after taking care of dividends during this period.

Mr. McDonald: Assuming that to be the purpose of the evidence, we submit the schedule he is now asking Mr. Wyer to produce during the noon hour would not tend to indicate that. Mr. Wyer has testified that certain amounts were charged either to current operation or to profit and loss or surplus, that the entire amount, whatever it may have been, was so charged, and I think the testimony shows that after said charges there was a certain surplus left on the books. The proportion which was charged one way or the other would not tend to indicate what Mr. Biggs says he hopes to prove. We therefore object to it.

Mr. Biggs: I have stated what seems to my layman's mind a very simple proposition. We have taken the net income for the period at a starting date. We then determine how much were the charges to surplus. Mr. Wyer is proper in saying that if there were any credits to surplus that they should be deducted from the charges. I was in error in not putting that in this testimony; I am perfectly willing to admit that. But whatever was the net charge to surplus is a deduction from the net income.

Then let us, for the purpose of illustration, assume that my statement about the $14,500,000. is the net charges to surplus after credits. You would then have an income of $34,500,000. to pay a six and a half million dollar dividend.

After that there would be a net income for the company of some twenty-eight million dollars. Now, if the charges to retirement, not included in any charges to surplus—

Mr. McConaughy: Your Honor, I want to interrupt just one second.

(To the witness) How long will it take to get what Mr. Biggs is asking for?

The Witness: The credits could probably be gotten during the noon hour. I don't know whether the amount of retirements charged to surplus could be determined during that period or not.

Mr. Biggs: I am not asking for the last cent; you can leave out everything under a thousand dollars.

The Witness: It doesn't matter what you leave out.

Mr. Biggs: I want to make it a round figure proposition; I am not asking for detailed exactitude.

Mr. McDonald: Our reaction from our standpoint, is that on Mr. Biggs' own statement—he is attacking this, with all due deference, with a layman's mind, but I submit, any accountant would tell the Court that on his own statement he has so confused figures of net income with other figures that I don't see how any accountant could meet his request. We object for that reason.

Mr. Biggs: With all due deference to Your Honor, I assume that you are a layman as far as accounting is concerned, and I am trying to work out a simple picture of this situation, and if I can understand that, I am certain then that Your Honor can.

Mr. McConaughy: May we have Mr. Biggs state again just what he wants, and I would like to ask Mr. Wyer how long it will take to get it.

Please state again what you want, Mr. Biggs.

Mr. Biggs: I want the amount of credits to surplus.

Mr. McConaughy: During what period?

Mr. Biggs: 1923 to 1929.

The Court: You want the amount of what?

Mr. Biggs: Credits to surplus, and if any of these thirty million dollar charges to retirement are contained in the $14,500,000. charges to surplus I would like to know how much.

Mr. McConaughy: Do you understand what he wants?

The Witness: I understand what he wants.

Mr. McConaughy: How long do you think it would take you to get that; is it a simple matter, or have you got to go to a lot of trouble?

The Witness: It is a simple matter to get the first part of it, credits to surplus. I think that could be gotten in fifteen minutes. I don't know whether the retirements can be separated between those charged to surplus and those charged to operating expenses in the noon recess. I couldn't answer that. I might say that as far as I can see it doesn't matter how they are separated between operating expenses and surplus, because in any event they are covered one way or the other in the net figure that Mr. Biggs is arriving at, so I don't see that the separation means anything—the computation of credits and arrangement of credits is a part of the picture that Mr. Biggs is trying to draw and that can be easily gotten.

Mr. Biggs: What I want to show by this interrogation is that approximately the income after these various deductions was the same as the retirement shown by Mr. Wyer's Exhibit 25.

Mr. McConaughy: Can you answer that question in an approximate way?

The Witness: Yes, I can say that he can not possibly show it.

Mr. McConaughy: Why doesn't that dispose of it, Your Honor? All we will get is the detail.

The Witness: I can say further, it doesn't matter whether you retire one million dollars or fourteen and charge it to surplus, it doesn't affect the figure that Mr. Biggs is trying to arrive at one particle.

Mr. McConaughy: I move that Mr. Biggs' request for that information be denied. It will only give the detail of what Mr. Wyer has already answered, and I think it is perfectly plain.

Mr. Biggs: It is not perfectly plain to my layman's mind, Your Honor. I do not see why it is not very pertinent to this case when one of the fundamentals is the financial need of the Missouri Pacific, to show that during a certain period they had a blank amount of retirements, or as shown by Mr. Wyer's exhibit, that they had thirty million and that the income of the company, after all charges to the surplus and after dividends paid, amounted to approximately that figure, because if that is in evidence and that is shown then it does perfectly illustrate that as a result of this period all the Missouri Pacific did was to earn dividends for its preferred stockholders of six and a half million dollars, and earn a sufficient amount to take care of retirement.

Mr. McConaughy: I ask Mr. Wyer if that will be shown.

The Witness: No, that can not be shown by the figures that Mr. Biggs has requested. In fact, it will quite certainly show just the reverse.

I tried to explain this two or three times, Your Honor, that this thirty million retirement that Mr. Biggs has been talking about has all been charged out on the books. Part of it was charged out in operating expenses. So, it was already taken care of when the net income was arrived at. You understand if it was not charged out in operating expenses, it was charged out in this fourteen million surplus which Mr. Biggs says was charged during this period. So, in one way or another it was all charged out and, of course, before the net figure which Mr. Biggs is arriving at. Now, if it had not been charged out and still remained to be taken care of then this net figure which Mr. Biggs is going to arrive at would have been thirty million dollars higher. So, the only part of Mr. Biggs' request that seems to me to have a bearing on the answer that he is trying to get is the credits to surplus that he didn't take into account. Now, that can be gotten easily. The other if you get it doesn't mean anything,

because it only tells what credits were taken care of, but they have been taken care of one way or the other and they can't be taken twice.

Mr. McConaughy: After you get that information Mr. Biggs won't be able to use it in the manner he is trying to do now?

The Witness: That is correct.

Mr. Biggs: You have stated—this is off the record.

Mr. McConaughy: I would like to have this on the record.

The Court: Very well.

Mr. Biggs: Q. You stated that the first is easy to get, about credits to surplus? A. Yes.

Q. Will you please examine, and if it is reasonably easy to determine the other parts I requested, will you please secure them during the noon hour?

I will consider this question again and I may coincide with Mr. McConaughy's opinion, or may not. I don't want to make a statement at this time, and the Court can reserve its ruling until this afternoon.

Is that satisfactory?

Mr. McConaughy: I object to asking Mr. Wyer to go to a great deal of trouble to get that breakdown of these figures when Mr. Wyer has already given the approximate answer.

The Court: Objection sustained.

Mr. McConaughy: That is, the exact dollars and cents amount is immaterial, it seems to me.

The Court: Objection sustained.

Mr. McConaughy: That part of the request that pertains to credits I understand Mr. Wyer can get very easily.

(To the witness) And will you?

The Witness: Yes, and I think that is pertinent to what Mr. Biggs is asking. I will try to get that for him.

Mr. Biggs: Q. Your next four exhibits, 26, 27, 28 and 29,

show what you describe as cycles of financing. Only two of these took place in the 1923-1929 period. Is it not true that other pieces of financing occurred during that period?

A. Yes.

Q. Mr. Wyer, will you tell me more about these operations and explain how the various roads in the Missouri Pacific system so arranged their offering as to supply almost continual additions of public money to the roads comprising the System?

Mr. McConaughy: I object to that question if Your Honor please, as it presumes a lot of things—

The Court: Read the question.

(Last previous question read.)

Mr. McConaughy: There is no proof in the record as to continual additions of public money.

The Court: Objection sustained.

Mr. Biggs: Q. Do you approve a policy of inter-company lending, regardless of the legal relationship between various companies involved, arising out of the chain of ownership between them?

A. I wouldn't think I would approve an unrestricted policy of that sort, no.

Q. To take a specific example, I note in Exhibit 26 that MOP obtained a loan from I.-G. N. in the amount of $750,000.: Had I.-G. N. done financing before this so that it was in a position financially to help out its corporate grand-father when the grand-father needed money?

Mr. McConaughy: I object to that question; it doesn't seem to be pertinent. It is going out into some relationship with the I.-G. N., which seems not to bear on the issues here.

Mr. Biggs: The exhibit shows a loan from the I.-G. N. to the Missouri Pacific. I want to find out if the I.-G. N.—

The Court: I want to hear you.

Mr. Biggs: I want to find out if the I.-G. N. was able to make that loan because it had just previously floated a bond issue or made independent financing.

Mr. McConaughy: That is objected to as irrelevant and immaterial.

The Court: He may answer.

(Last previous question read to the witness.)

A. I don't know whether the I.-G. N. had done any financing immediately before this or not. I don't know about any short term financing which the I.-G. N. had done. I don't know just when they sold their last bonds, but I don't know of any short term financing, and if they sold their last bonds those bonds—in fact, all of the I.-G. N. bond issues sold during this period were to reimburse the treasury for capital improvements or to provide for further capital improvements, so that if they had had any money to loan to the Missouri Pacific it must have been part of their regular working fund, but I don't have the details of the I.-G. N. situation in mind right at this time.

Mr. Biggs: Assume that this loan from the I.-G. N. to the Missouri Pacific was in March, 1928. A. Yes.

Q. Let us assume that the I.-G. N. a short time prior thereto put out a bond issue and had some excess funds on hand as the result thereof—

Mr. McConaughy: Are you laying a foundation for a request for his opinion?

Mr. Biggs: That is right.

A. What is the question?

(Last previous question read to the witness.)

Q. (Continuing) —would you approve the loaning of these funds to the Missouri Pacific, who stood in the relation to the I.-G. N. of grand-father and child?

A. Well, I might have in this particular instance, although I think as a general policy I don't like to see subsidiaries loaning money to parents.

Q. Do you approve the borrowing of money by MOP on its own hospital fund?

A. Of course, that depends upon the circumstances at the moment. As I say, I don't recall exactly what they were on the I.-G. N. It does do this, it gives the subsidiary income on the surplus fund that it may be able to loan

for a short period of time, and if the financial position of the parent is perfectly sound at the time and it appears there is no chance of the subsidiary not being promptly repaid, it is an advantage to the subsidiary to get the income from this surplus fund. Certainly I think in 1928 there was no indication that the MOP was not in a position to repay these advances. Now, I say it may be justified in special circumstances, although I can think of other circumstances where I would not approve a subsidiary loaning money to a parent.

Q. I note that in August, 1928, MOP borrowed from N. O. T. & M., and in Exhibit 27 I notice similar borrowings from the Texas and Pacific: Do you make any distinction between the borrowing from N. O. T. & M. and the borrowing from Texas and Pacific?

A. Not basically. They were both controlled subsidiaries. Neither one was one hundred per cent. owned. There was this difference, that the Texas and Pacific had a separate president and was somewhat more independent in its management than the New Orleans, Texas & Mexico, in that the New Orleans, Texas & Mexico had substantially the same officers as the Missouri Pacific, while the Texas and Pacific had largely different officers; not entirely, but largely so.

Q. Could MOP have borrowed money in the same way from the Pennsylvania and New York Central, for example? A. No, I don't think so.

Q. Now, Mr. Wyer, we come to the next three-year period, 1930, 1932, inclusive. The gross additions and betterments to the property in this period appeared to be approximately $39,500,000. and the retirement amount approximately $17,000,000. Now, taking your Exhibit No. 28 we learn that against these gross additions of $39,500,000. Missouri Pacific issued bonds of $43,000,000. in 1930 and 1931, this figure being arrived at by taking the total of bonds sold during the period, to-wit, eighty-six million, and subtracting the sum of forty-three million dollars used to retire underlying bonds. Turning now, Mr. Wyer—wait a minute: Is that a correct statement, Mr. Wyer? A. No.

Q. You understand that I am only using round figures now?

A. Yes, but you made a wholly improper calculation in the course of your statement. Bonds issued during any given period hardly ever apply to additions and betterments made during that period. In fact, they almost invariably apply to additions and betterments made prior to the issue of the bonds. The Interstate Commerce Commission's policy with respect of approving capital issues permit their issue against any capitalizable asset, regardless of the date when made, that is, for example, if Missouri Pacific had capitalizable expenditures, or capitalizable assets on hand. Even back in 1920 you will see that the Missouri Pacific had capitalizable expenditures which were a proper basis for the bond issue in 1932. There was an issue sold early in 1932—no, 1931. So that the bonds issued during that particular period can not be properly matched up against the capital improvements made during that same period, because the Commission's policies don't work that way.

Q. And it is entirely justified from a business standpoint?

A. Yes, I think so. It simply means that if you have put fat on your bones during the period when you have some fat to put there you could draw on that reserve when you need it. Otherwise, you would have had to borrow the money and pay unnecessary interest charges on it in the meantime, in order to be sure you had the money on hand when you needed it. I think it is highly justified.

Q. Turning, Mr. Wyer, to the operating income for the same three years, is it not true that for that period—

Mr. McConaughy: What exhibit do you refer to now, operating income for the same three years?

Q. Is it not true, Mr. Wyer, that the operating income for the same three years resulted in a net loss from operations charged to surplus, amounting to two million dollars, approximately?

A. I haven't checked the figures. There was a pretty good income in 1930 and a small income in 1931, and a deficit in 1932. I don't know what the net result would be.

The Court: Announce a five-minute recess.

(After the recess the hearing was resumed as follows.)

Q. Mr. Wyer, you made particular point in your direct examination that the Interstate Commerce Commission was kept fully informed as to the additions and betterments which you had made, so that when you wished to get a new issue of bonds authorized by the Commission, the facts could be immediately at hand. Is it not true, in connection with the financing of the Series I bonds, that the Commission was so doubtful as to whether you had sufficient assets to cover that portion of the bonds not used to retire the underlying Iron Mountain bonds, that they actually imposed a restriction on the use of a part of the proceeds and would not allow you to use the money until they had looked into the matter further?

A. That was not true as to all of the proceeds outside of that used to acquire the Iron Mountain.

Q. I said a part of the proceeds.

A. No. I think your question said that they were so doubtful as to all of the items outside of the retirement. That restriction only applied to part of the items outside of the retirement. There was one section of the capitalizeable expenditures aggregating some ten million dollars, upon which they asked for further information. I don't think they were doubtful about it. I think the information furnished simply did not meet their formal requirements, and as soon as we furnished the additional information required, they released it. I think it was just a case of meeting their formal requirements, and ordinarily they probably would have waited to release the whole issue until these formal requirements had been met, but in view of the maturity and our need of the money to meet the maturity, it released enough to meet the maturity plus, I think, some eight million dollars more, which they were ready to release, and as to the remaining approximately ten million, waited until we had met their formal requirements. I think it was only a case of a few days involved in the delay to the remaining ten million.

Q. Is it not true, Mr. Wyer, in a period such as this 1930 to 1932 period, that so long as it was the policy of management to pay dividends, every cent of either real or apparent income was of a vital importance in supporting a continuance of this policy?

The Witness: Would you read that question, please?

(The question was repeated by the reporter.)

Mr. McDonald: We object to that question, Your Honor, because it is—in short, it is neither fish nor fowl: it is an attempt to frame a hypothetical question in such a misleading way that it will later be made the basis of a contention that Mr. Wyer has made a positive statement about something that happened during a period which is merely used as illustrative. We object to it because it is vague and misleading, is not based on anything in the record, is not in response to any direct examination.

The Court: Read the question.

(The question was again repeated by the reporter.)

The Court: He may answer.

A. Well, I am not sure just what your distinction is between real or apparent income. I have never seen a time in the railroad business when every cent of income that you could get was not important. That is what every railroad strives for, and what every railroad executive strives for is to produce the greatest income out of the property under his control consistent with what he believes to be safe operation and good service to the public, and having in mind the best interest of the property as a whole. I have never seen a time when income was not important.

Q. Do you want my definition of apparent income? Would that help you out?

A. Well, if that is a factor in this question, if you have got some distinction in mind between real and apparent income that I do not understand, why, I would be glad to hear it.

Q. Well, I mean, as an illustration, when we state apparent income, here is a locomotive that is put on a siding somewhere, and on account of its obsolescence cannot be used for hauling a freight train between Texarkana and Little Rock or any other place on the system, and, however, it appears on the books at $150,000. Now, if that locomotive is charged off during the year, there is a decrease in the income of $150,000; if it is left on the books, then the income is increased by $150,000, and that is what I mean by apparent income.

A. Well, in the first place, I don't think much of your example, because an obsolescent locomotive could not possibly be carried on anybody's books at $150,000.

Q. Well, $50,000, I will put it.

A. Assuming that you might have a locomotive that would be carried on the books at whatever was the proper figure, and if it were retired and there would be a retirement chargeable to operating expenses in connection with the retirement, I don't think that would be of sufficient importance to be governed by what the policy might be with respect to dividends at the moment.

Another thing that every Board of Directors takes into account in connection with the continuance or the discontinuance of the dividend policy is the cash position of the company, and the kind of transaction you are talking about would not affect the cash position very much; as a matter of fact, it would probably improve the cash position, because you have realized the salvage from the locomotive, and the retirement would, therefore, perhaps decrease the report of net income but improve the cash position, and those two things offset each other, as far as their repercussion on a dividend policy is concerned. I do not see that that would be a factor.

Q. In this connection, I note that you received copies of certain memorandums attached to Mr. Eckert's exhibits, specifically, Group Exhibits 7, 8, 9, at least that many. There may be more there (handing some documents to the witness), but one of them is enough for the purpose of my question.

A. Do you mean I did receive them at the time the letters were written?

Q. That is correct. A. Back in 1931?

Q. Yes. A. That is what these exhibits show.

Q. They indicate that. And these exhibits indicate that remittances from NOTM to MOP were allocated between interest and principal, do they not? A. Yes.

Q. And I also believe it is a fact that in 1931 was the first time that in any of these remittances, there had been allocations to interest.

Mr. McConaughy: Your Honor, I object to the line of questioning about the advances, because Mr. Wyer was not asked anything about that on direct examination.

The Court: Sustained.

Q. Were you interested, Mr. Wyer, in 1931, in knowing that every means was being availed of, to increase the reported earnings of MOP?

A. No. I don't think we were ever interested in the kind of procedure that is suggested by your question.

Q. Is it not true that the handling of the transaction as shown on those exhibits was started by an official of MOP giving instructions to an official of NOTM?

Mr. McConaughy: Your Honor, I object to that again. It is not a part of—

The Court: It will be sustained.

Q. As you have included the figures since 1933 in Exhibit No. 25, I will ask you two questions with respect to the pre-war and war periods. From Exhibit No. 25, it appears that the gross addition to property, 1933 to 1939, amounted to 44 million. During the same period, retirements amounted to approximately 39 million. Does not the extent of the retirements in this period, which averaged annually more than the average annual retirements in the two preceding periods which we have discussed, indicate that there was a much larger amount of concealed obsolescence prior to 1933 than had been reflected in the pre-bankruptcy reports? A. No, I don't see any connection.

Q. Don't see any connection? A. No.

Q. Taking the period, 1940 to 1944, gross additions amounted to 52 million, and gross retirements amounted to 15 million. Does not this show that the condition of the assets at present is sounder, so far as their capacity to produce earnings is concerned, than at any time since 1917?

A. Well, I think that has been true. The Missouri Pacific, right along ever since 1923, it has been a constantly improved property, year by year, so that I think today it is probably, physically at least and insofar as possession of facilities is concerned, is in better condition than at any time in the past twenty-two years. That does not necessarily mean earning capacity, because earning capacity depends upon rates—freight rates and passenger fares, wage rates and taxes, and a good many other things, and

you might have the finest physical property in the world, but if it was not able to collect the freight rates necessary to enable it to maintain itself and operate itself and make a profit on the volume of business that was offered to it to handle, the physical condition would not be very important to you.

I am not saying that the Missouri Pacific is not in a good position, because it is, but, of course, recent Missouri Pacific earnings which have been so high are, to a considerable extent, the result of the great volume of business that it is handling.

Now, of course, Missouri Pacific has been able to handle this tremendous business during the war because of the great improvement program that has been put on this property from 1923 to 1930, especially. That undoubtedly was the major factor in permitting the Missouri Pacific to take such an important part in the war and handling this tremendous volume of business, and with the result of the big war time earnings, but whether the Missouri Pacific post-war earning capacity, even considering its present physical plant, is going to be high, or low, or moderate, depends upon factors that I don't think can be foreseen at this time.

Mr. Biggs: That is all at this time, Your Honor.

Mr. McConaughy: Are you through with Mr. Wyer?

Mr. Biggs: Through this morning.

Mr. McConaughy: Oh, this morning.

Mr. Biggs: That is all, Mr. Wyer, at the present time. Thank you.

Mr. Biggs: If Your Honor please, Mr. Bradley is here, and he has prepared the exhibit, and it will only take less than a minute.

The Court: Very well.

H. T. BRADLEY,

a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further as follows:

Direct Examination

By Mr. Biggs:

Q. You have already been sworn, Mr. Bradley?
A. Yes, sir.
Q. Did you prepare, at my request, an exhibit?
A. Yes, sir.

(The said document was marked by the reporter as Comstock Exhibit No. 136.)

Q. I show you a paper that has been marked "Comstock Exhibit No. 136", and ask you to state what it is.

A. This is estimate of original cost of the Gulf Coast Lines as of December 31, 1927, based on I. C. C. methods, plus subsequent additions and betterments to December 31, 1932, as reported to the Interstate Commerce Commission on BV Form 588.

Q. This was prepared under your supervision and direction? A. Yes, sir.

Mr. Biggs: Offer it in evidence.

(The said document, identified as Comstock Exhibit No. 136.) [See Vol. of Exs. p. 233.]

Cross Examination,

By Mr. McConaughy:

Q. Mr. Bradley, Item 1 on Comstock Exhibit No. 136 refers to original cost. Original cost is not actual cost, is it? A. It is—

Q. (Interrupting) Just answer yes or no.

A. It is partially estimated, partially actual.

Q. Now, is original cost value for rate making purposes?
A. No, sir.
Q. Is it value for any other purpose that you know of?
A. No, sir.
Q. Has the Commission revealed how it computes value for rate making purposes? A. No, sir.
Q. Now, in your testimony day before yesterday, you referred to a document filed in these proceedings by one of the I. C. C. bureaus, called "Elements of Value". What is that bureau, what is the name of that bureau?
A. Bureau of Valuation.
Q. Bureau of Valuation? A. Yes, sir.
Q. Called "Elements of Value." Has the Commission revealed how it uses elements of value in computing value for any purpose?
A. No. That is secret. They don't disclose that.
Q. Original cost is one of the elements of value to which I have just referred?
A. That is right, it is one of the elements, yes.

Mr. McConaughy: That is all.

Mr. Biggs: That is all, Your Honor.

The Court: Would you like an adjournment at this time?

Mr. McConaughy: Your Honor, I can save a little time. I have something from Mr. Wyer here in the nature of redirect which will save a minute.

The Court: All right.

Mr. McConaughy: And it is right on this point.

The Court: All right.

WILLIAM WYER,

a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further, on behalf of Institutional Group of Bondholders, as follows:

Redirect Examination,

By Mr. McConaughy:

Q. Mr. Wyer, you were here and heard the testimony of Mr. Kirkpatrick and Mr. Bradley, and there was a considerable amount of discussion of reports to the Interstate Commerce Commission on BV-588 Forms, and I would like to have you explain, if you know, the difference between the BV-588 reports and the Auditor's figures relating to additions and betterments.

A. These BV-588s are referred to on this last exhibit that Mr. Bradley has just introduced. There are two sets of figures on a railroad in connection with additions to physical property. They are both kept in accordance with instructions of the Interstate Commerce Commission. In one case, the instructions are initiated by the Bureau of Accounts, and in the other case by the Bureau of Valuation. The Bureau of Accounts issues instructions that govern the books of account. The Bureau of Valuation issues instructions governing the valuation records, and the BV-588 is one of the valuation records. It is a report which the railroads file with the Bureau of Valuation covering additions to and subtractions from their physical property.

The primary purpose of the BV-588 is to report physical units, then it also reports money value or money expenditures or retirement credits in addition; however, the money figures reported on the BV-588 do not agree and never can agree with the figures on the books compiled in accordance with this other set of instructions, for two reasons: first, the books are current, that is, every month the expenditures on additions to property are recorded on the books, but on the BV-588, no report is required until the job is completed, so that if a job starts, for example, at the end of 1926, we will say in December, and is not finished until sometime in 1928, that would not be

recorded on the BV-588 until along with the 1928 figures, whereas the books would carry charges to that job in 1926, 1927, and 1928, so that the BV-588s are always behind the books, and sometimes in very substantial amounts.

Now then, even when—even taking the time when the BV-588 catches up with the books, the figures may not necessarily agree, and in many instances do not agree, because the instructions themselves are different as to the way in which the expenditures will be recorded. The same job, even after completion, may show a different expenditure on the books than it does on the BV-588s.

Mr. McConaughy: That is all, Mr. Wyer.

Mr. Biggs: No questions.

The Court: Announce an adjournment until two o'clock.

Adjournment at 12:15 P. M., March 23, 1945, for the noon recess, until 2:00 P. M.

Met pursuant to adjournment, at 2:00 P. M., on March 23, 1945, and the following proceedings were had:

Mr. McConaughy: So that I won't interrupt Mr. Biggs, I would like to correct a mistake which I made this morning. Mr. Biggs asked two questions of Mr. Wyer, relating to the advances, and I stated to the Court that Mr. Wyer had not testified concerning the advances, and that was entirely erroneous. He has done so, and I would like to withdraw my objections to those questions and tender Mr. Wyer now to answer them.

(The witness, WILLIAM WYER, was recalled to the witness stand.)

Mr. McConaughy: The ruling was based on my erroneous statement, and may I ask that the ruling be stricken?

The Court: What ruling was that?

Mr. McConaughy: You sustained my objection to two questions that Mr. Biggs asked of Mr. Wyer, regarding

the advances. I have just called the erroneous statement I made to the attention of the Court, and I ask the ruling be withdrawn.

The Court: Very well. It will be withdrawn.

Recross Examination,

By Mr. Biggs:

Q. This morning, Mr. Wyer, I had asked you whether you received copies of certain memorandum in regard to the application between interest and principal payments on certain refunds of certain payments by NOTM back to Missouri Pacific against advances. Do you remember that?

A. Yes.

Q. And I believe you stated that you had received copies of these memorandums? A. Yes.

Q. At the time they were issued? A. That is correct.

Q. Were you interested, in 1931, in these memoranda referred to, in knowing that every means was being availed of, to increase the reported earnings of MOP?

A. No. I don't think I ever looked at the situation from that point of view.

Q. I see.

A. We were interested, as I said, a railroad always is in getting all the earnings we could consistent with safely and good service, but that is about as far as I could go on that.

Q. Isn't it true, Mr. Wyer, that these payments against interest, as shown by these memoranda in 1931, were the first time that you credited payments against interest, rather than crediting all payments against principal?

A. I am not sure. They may have been, but if they were, it was only because up to that time the interest had been paid currently when due, and that this was the first time that there was any interest that had not been paid currently when due, and, consequently, the first time when it would have been proper to credit any of the repayments against interest.

Q. May I see Mr. Eckert's exhibits? I did not know we were going back into this field.

(The witness produces some exhibits.)

Q. Do I understand then from your testimony that interest had been paid currently on all these advances up to that time?

A. Well, I have not got the complete record of these payments before me at the moment, but interest was paid currently at the beginning of this period, during the first part of this advances period, that is, the period during which the advances were made, and I am not sure whether the advances covered by those memoranda are the first ones that were a part of the repayment so credited to interest or not, but I know that there was for a time full payment of interest, then I think there was one advance that was credited fully to interest or wholly to interest, which possibly preceded the advance, the repayments that you are asking me about right now, but of course you understand that the Missouri Pacific's income was not affected in the slightest by any distribution or division that was made on these repayments as between principal and interest. The interest on these advances was accrued in the accounts when due, and whether it was paid or not did not affect the purported income of the Missouri Pacific by one penny.

Q. It did affect the actual?

The Court: Affect the what?

Mr. Biggs: Affect the actual income.

A. No, it did not change the actual income at all. It affected the amount of cash on hand, but it did not make one penny's difference in the actual income of the Missouri Pacific.

Q. By merely putting an item on the books, no matter what the chances of its repayment are concerned, that is just as much income as cash coming in?

A. No; that is not what I said. If you put a good item on the books, it does not affect your income one particle whether it is paid now or six months from now, as long as it is a good debt.

Q. It is not true, Mr. Wyer, that the handling of this allocation between principal and interest of these payments back by NOTM to Missouri Pacific was started by

an official of Missouri Pacific giving instructions to an official of NOTM?

A. Well, I don't know what you mean by starting the handling. The separation of these repayments between principal and interest would be computed by both the Missouri Pacific Accounting Department and the NOT&M Accounting Department, and the memoranda that you have there that you are referring to were written by Missouri Pacific officials to an NOTM official, that is true, but it was not a case of starting anything. They both made a computation, probably simultaneously, and one checked the other. This was merely an advice of what the Missouri Pacific made it, and if the NOT&M did not agree, why, of course they said so.

Q. Is there any evidence in the record as the basis for that statement?

A. Yes, I think Mr. Eckert testified to that.

Q. He merely testified, if I remember his testimony correctly, that he checked this letter from Mr. Johnson when it came in. A. Well, that is about what I said.

Q. Not my understanding of your statement. So that we are clear about this, these memoranda indicate that Mr. Johnson, an official of the Missouri Pacific, wrote a letter to an official of the NOTM, I believe it was Mr. Eckert, advising him that Missouri Pacific had received a payment on advances, and to credit on the books blank amount to principal and blank amount to interest.

A. Yes, I think that is correct.

Q. And this letter was from an officer of the Missouri Pacific to an officer of NOTM? A. I think that is correct.

Q. All right. Exhibit No. 29 covers the last public financing done by NOTM. As I understand your testimony, you have, in introducing this exhibit, suggested that it is comparable to the typical Missouri Pacific financing described in Exhibits Nos. 26, 27, and 28. As you described the financing of Missouri Pacific, you said that it was customary to make short term loans, and when they had accumulated to an amount large enough to make an acceptable block of bonds for the bankers to offer, a public offering would be made and the proceeds used to retire the temporary loans. Is that not the summary of your testimony? A. I think that is correct.

Q. On page 1050 of the record, you state that NOTM was never able to sell bonds, because of the condition of the financial markets after the sale of Series D bonds. Is this not correct? A. No. That is not what I said.

Mr. McConaughy: Do you want to see it, Mr. Wyer?

(Mr. McConaughy hands the record to the witness, who examines it.)

A. I said that the NOT&M was never able to sell bonds, because of the condition of the financial markets after the Depression started, that that was the reason.

The Court: I did not get that—were not able to sell bonds why?

The Witness: Because of the condition of the financial markets after the Depression started. Now, of course, the Depression did not start for quite a while after the Series D bonds were sold. The point is simply that by the time the next cycle got to the place where the amount involved was sufficient to constitute an attractive block from a financing standpoint, the condition of the markets had gotten to the point where the bonds could not be sold. Of course, while this cycle was developing in 1928 and 1929, undoubtedly bonds could have been sold, but at that time the amount of the advances was not large enough to constitute a marketable block of bonds or to support a marketable block of bonds.

Q. And then in 1930 and 1931, why, there was no market for the bonds on account of the Depression.

A. I think there would have been a market in 1930, but I don't think there would have been in 1931.

Q. There would not have been a market in 1931. Now, as I understand it, you need a block of at least about five million as a minimum?

A. That would be about the lowest amount you ought to have, yes.

Q. To justify carrying out a public offering and selling of the bonds through banks? A. For the NOT&M.

Q. For the NOT&M. A. That is true.

Q. The Missouri Pacific would have to be a bigger block?

A. Yes.

Q. However, Mr. Wyer, isn't it true that when the Series D bonds were sold in 1928, this mortgage was substantially closed?

A. Well, I think that may be true. I don't remember just what that is, but, of course, that would not have prevented putting a different kind of a mortgage on in some form, if the markets had been right. I think there were some restrictions on selling existing First Mortgage Bonds under the existing mortgage. I think there was a ratio between the bonds and the amount of stock outstanding which in effect would restrict the issue of bonds.

Q. Didn't it, in effect, provide you could only sell bonds up to three times what you had stock outstanding?

A. I think that is correct.

Q. And you had somewhere under fifteen million dollars of common stock outstanding? A. Very little.

Q. Very little. A. It was approximately 15 million.

Q. Yes, so that the top limit on bonds that you could issue under this open end mortgage—open end First Mortgage of NOTM, we will say, would be 45 million?

A. That, I think, is substantially correct.

Q. And at that time you were pretty close to that top?

A. Yes, we were.

Q. If NOTM had no way of financing its current borrowings by issuing additional bonds, except in a very limited amount, why did you suggest that the parent company expected to get its money back by this procedure, if it made any advances?

Mr. McConaughy: I object to that question because it is based on an assumption which has not been proved here, that there was no other means of financing the NOT&M.

The Court: Sustained.

Q. Did NOTM have any way of financing its current borrowings, except by issuing additional bonds up to this 45 million dollar top, which was very limited?

A. Well, it could only issue, I think, about two million dollars more First Mortgage Bonds.

Q. Yes.

A. But that would not have prevented the NOT&M from issuing bonds under a new mortgage, if that could be worked out.

Q. That would have been a second mortgage?

A. That would have been a second mortgage, probably would have taken the form of a refunding mortgage, and would have been designed to take up the First Mortgage Bonds in later years as they came due, and ultimately become a first mortgage, but there was nothing that I know of that would have prevented the NOT&M from arranging financing of that kind when it got to the point where first mortgage authorizations were exhausted.

Q. Do you think the credit of NOTM was such in that period that it could have sold second mortgage bonds?

A. Yes, I do, up to a certain point. The credit of NOT&M, I would say, along there in 1927 and 1928 was better than the credit of the Missouri Pacific, because at that time the NOT&M bonds were legal investments for savings banks in the State of New York, and the Missouri Pacific bonds never were. Now, of course, it would have required better credit to sell that kind of a bond. On the other hand, Missouri Pacific in 1929 sold 46 million of unsecured debentures. Now, certainly a second mortgage bond of the NOT&M in 1929 would have sold better than those unsecured debentures. Up to a certain point in the markets, I have no doubt but that the NOT&M could have sold that kind of a bond.

Q. In view of the fact that only a small amount of these First Mortgage Bonds could be issued, how did the Directors of Missouri Pacific expect the advances to NOTM to be repaid?

A. Well, I think they expected them to be repaid through some form of NOT&M financing.

Q. Through second mortgage financing?

A. The bulk of it would have had to be through second mortgage, or perhaps all of it. If you were issuing a series of bonds, second mortgage bonds, to take care of this, it would probably close the first mortgage where it stood and make the whole financing through the new refunding bonds.

Q. Did not Mr. W. H. Williams testify before the Interstate Commerce Commission during 1929, in connection with the proposal to lease NOTM, that the means of public financing, as far as NOTM was concerned, had been exhausted? A. I don't know whether he did or not.

Q. Well, you knew what Mr. Williams' ideas were along these lines. Have you any opinion as to what was in his mind at that particular time?

A. I don't even know that he testified to that. I know what the facts were as to NOT&M financing, which I have tried to give here.

Q. Well, do you know whether or not Mr. Williams believed that in 1929 there was no opportunity for any further public financing in substantial amount by NOTM securities?

A. I would feel pretty sure that he believed that as to the First Mortgage Bonds, but I would also feel pretty sure that he did not believe it as to junior bond issue.

Q. In preparing your exhibits in connection with the transactions between MOP and NOTM, will you kindly state what exhibits you have prepared on a consolidated basis, and which exhibits you have prepared on the basis of separate corporate entities?

A. Well, Exhibit No. 23, which is the map, I think you would probably call separate corporate entities; and Exhibit No. 24, the mileage exhibit, the same. Exhibit No. 29, the cycle of financings, is on a consolidated basis.

Q. 29?

A. Right. Exhibit No. 30, which is the one of the two exhibits of the form of statements which the Board had under consideration was on a consolidated basis. Also Exhibit No. 31, which the Board had before it. Exhibit No. 32 is on a consolidated basis, and also Exhibit Nos. 33, 34, 35, 36. Exhibit No. 37, showing gross additions and betterments, is on a separate corporation basis. Exhibit No. 38, the income account, is on a consolidated basis; also Exhibit No. 39; also Exhibit No. 40; also Exhibit No. 41; 42, I suppose you would call that on a separate corporate basis; 43 has to do with the Brownsville; 44 with the Beaumont; 45 with the Brownsville; 46 with the Brownsville; 47 with the Brownsville.

Q. In order to clarify your exhibits and testimony, will you tell me whether you regard a consolidated statement as being anything more than a statistical memorandum?

A. Yes, I certainly do.

Q. Will you explain?

A. Yes. When the—due to the peculiar corporate set-up of the Gulf Coast Line Companies, whereby the parent company only owned 11 per cent of the mileage and at the same time was the only company that could provide any of the public financing, except for the equipment trusts which the Brownsville had, the earnings and other statistics and accounts for the New Orleans, Texas and Mexico, proper, did not mean an awful lot.

Now, that was especially true of earnings, because of the small mileage and the fact that the income from railroad operations was a small part of the income of all of the subsidiaries. So unless you had an arrangement whereby all of the net income of the subsidiaries was declared out in dividends to the parent company, and all of the deficits of the subsidiaries were paid by the parent company and charged to its income account, the parent company's income account would not reflect the operation of all of the subsidiaries.

We never had such an arrangement on the Gulf Coast Lines. Some of the companies used to pay out portions of their income, but it was not a thorough-going arrangement, and those payments were not complete, and the deficits were not charged to the parent company, and the only picture of what the Gulf Coast Lines were doing was to be had only in the consolidated income account. And that is what the Directors always looked to, and the cash that they dealt with was a consolidated figure, and the requirements for advancements from the Missouri Pacific were based upon the needs of the consolidated companies, and from a business standpoint, the consolidated set-up was the one that they were always interested in, and I know that the Directors never had the complete income accounts of all of the subsidiaries. And while I think the income accounts of perhaps some of the important subsidiaries were available to them, they were never—I would say that no interest was taken in them; that the main thing was the con-

solidated showing, because that was the only way in which you could get the deficits of the losing subsidiaries into the picture. If you dealt with something that was not the consolidated basis, you would be over-optimistic, because the deficits of the subsidiaries would not come to your attention in any other way, and in order to get the whole picture and the true picture, the consolidated basis was the only one.

Q. Do you make any claim that a consolidated statement shows the legal relationship which exists between the separate companies which are included in a consolidated income or balance sheet statement?

A. Do you think I am qualified to answer that question?

Q. You have been testifying as an expert.

The Court: For how many lines?

Mr. Biggs: In very many, Your Honor.

Q. Can you answer the question.

Mr. McConaughy: Your Honor, I object to the question.

The Court: Sustained.

Mr. McConaughy: It calls for a legal conclusion.

Q. In preparing these exhibits, did you ask your counsel here whether these consolidated exhibits showed the legal relationship which existed between the separate companies which are included in the consolidated income or balance sheet statement?

A. No, I did not ask counsel that question.

Q. You did not? A. No.

The Court: Why should he?

Mr. Biggs: Well, just a question.

The Court: How?

Mr. Biggs: Just a minute.

The Court: I am just asking you why should he have asked counsel that.

Mr. Biggs: If it does not show the legal relationship, if Your Honor please, I don't believe it is competent evidence. That is the answer to it.

Q. Were you advised by your counsel that consolidated statements showed the legal relationship between the companies?

A. No, I don't recall that I was, either way.

Q. I see. Is it not true, Mr. Wyer, that when NOTM lent money to Brownsville, that the real reason Brownsville did not issue additional bonds, as you suggested in your testimony they might have done; is because such bonds would have had to be deposited with NOTM First Mortgage trustee? A. No.

Q. Do you mean they would not have had to be deposited? A. No. I mean that is not the real reason.

Q. That is not the real reason. Well, what was the real reason?

A. The real reason was that it would simply have been unnecessary paper work and unnecessary extra expense would have been incurred.

Q. And no benefit either to NOTM or Missouri Pacific?

A. No benefit to anybody. You see, the entire securities of the Brownsville were pledged under the NOT&M mortgage, and if you issued more bonds, that would simply reduce the value of the stock. The value was there in the form of either stock or bonds, and more bonds would not have given the NOT&M any more to use in the way of financing the picture than they already had with the pledge of all the outstanding securities.

Q. So there was no way to secure any kind of collateral as a result of additions and betterments on the Brownsville, which could be used either by NOTM or the Missouri Pacific to secure a loan?

A. I did not say that at all. As these additions and betterments were made, obviously the property of the Brownsville became more valuable, and as the property became more valuable, the securities of the Brownsville pledged with the NOT&M under the First Mortgage became more valuable, and the NOT&M's borrowing power was increased, and so on up the line.

Q. But the First Mortgage of the Brownsville held by NOTM was pledged as collateral under the NOTM First Mortgage, is that not true? A. That is correct.

Q. Is it not true that the annual reports of NOTM in evidence in this hearing for the years 1924 through 1932

show that the investments of NOTM in its subsidiaries were represented by four categories, namely, bonds, stocks, advances, and family line bills?

A. Well, now, what annual reports are you talking about? To whom?

Q. Annual reports to the stockholders.

A. Well, those annual reports to the stockholders for the years that you mentioned are on different bases. They started out on one basis and wound up on another, and I think by the time you got to the year 1932, they were on an entirely consolidated basis, so that the NOT&M's investments in its subsidiaries were not shown in the annual reports at all.

Q. All right, let's forget about the annual reports. What categories were the investments of NOTM in its subsidiaries divided into?

A. Are you talking about the parent company now?

Q. That is right.

A. Well, I think they were divided in those classifications that you mentioned.

Q. So far as NOTM income from these investments was concerned, is it not true that it was reported as derived only from two categories: interest on bonds and dividends on stock? A. I think that is correct.

Q. If NOTM had not received any payments of interest—

A. (Interrupting) Wait—excuse me a minute—I think that was not quite a correct answer that I gave you. I think there was also some interest on advances on the NOT&M income account.

Q. Would it be in any substantial amount?

A. Not as much as the others, but I think the Texas City Terminal, for example, the NOT&M had advances to the Texas City Terminal on its books, and accrued interest on those advances, and there may be one or two other minor instances, but there was some interest on advances in the income account of the parent company. Of course, the Texas City Terminal did not get into the consolidated income account. That was probably the reason for it.

Q. But they were of minor character?

A. That is correct. They were not the larger part of the income on securities.

Q. If NOTM had not received any payment of interest or dividends from their subsidiaries, is it not true that in none of the years between 1924 and 1932, inclusive, that NOTM, the separate corporate entity, would have had sufficient income to pay the interest on its own First Mortgage Bonds?

A. Why, I have not checked it, but I have no doubt that is true.

Q. On the dates prior to January 1, 1925, on which Missouri Pacific acquired New Orleans, Texas and Mexico stock, NOTM showed a book surplus, is that not correct?

A. Well, I don't remember offhand. I assume that those figures are in the record.

Q. Yes. Is it not true that any dividends paid by NOTM thereafter, which reduced the surplus below the amount at which it stood on the date at which the stock was acquired, would, from the standpoint of Missouri Pacific, be a return of capital to the extent to which the surplus was thereby reduced?

A. Why, I don't think so at all. If the answer to that question was yes, that would mean that—there is no reason for picking out the Missouri Pacific as somebody purchasing stock in a company, that would apply to any investor who went out and bought stock in any company in the United States, and if at any time after he bought his stock, his dividend was declared which reduced the surplus below where it stood at the day he bought his stock, under your theory, that would be a return of that investor's capital. You know that is not so.

Q. Just so we understand each other. You buy control of a corporation that has a surplus at the time of purchase of a hundred thousand dollars; thereafter, as a result of dividends, the surplus is reduced to twenty-five thousand dollars: Have you not received a return of capital in the amount your stock holdings bear to the whole amount of stock outstanding, so far as the $25,000 is concerned? A. I don't understand so.

Q. You understand my illustration?

A. I understand your illustration. I don't understand that that constitutes the return of capital.

Q. In your testimony in regard to family line bills, didn't you state that it did not make any difference which voucher for family line bills was paid?

A. I may have made that statement, if I—because I believe that to be true. I don't remember whether I made that statement or not, but I think that is correct.

Q. You have got here a lot of vouchers for family line bills. As I understood your testimony, it did not make any difference which one you picked out of the basket.

A. Well, I may have said it.

Q. I don't think you used those exact words, Mr. Wyer.

A. If I did not, I will say it now.

Q. But in using layman's language, that was my understanding of your testimony.

A. I think that is correct.

Q. On the contrary, is it not a fact that whoever controlled the selection of family line vouchers out of the basket that were paid automatically controlled two bookkeeping results; one, if all vouchers representing interest payments and dividend distributions were paid, NOT&M could report income in excess of fixed charges and could continue to keep a bookkeeping surplus?

A. No, that is not correct.

Q. That is not correct. Two: if, on the other hand, only vouchers covering any other items were paid, NOTM would have no income from its investments in its subsidiaries, and no bookkeeping surplus?

A. No. It does not work that way.

Q. It does not work that way. All payments of interest and dividends by subsidiaries to NOTM were in the form of family line vouchers?

A. I think the family line voucher was prepared in each case covering interest and dividends. I think that is correct.

Q. And when interest or dividends were actually paid, they drew out of this basket of vouchers the particular voucher pertaining to interest or dividends, is that not true?

A. Well, I think that is true, yes, accepting your figure of speech.

Q. Well, we understand each other on it?

A. I think so.

Q. Now, Mr. Wyer, you did testify just a few minutes ago that if NOTM had not received any payments of interest on these bonds or dividends on these stocks during

the years 1924 to 1932, that it would not have had sufficient income to pay interest on its own First Mortgage Bonds. Do you remember that question? A. Yes, I do.

Q. So that if the particular vouchers pertaining to interest and dividends were left in the basket, NOTM would not have had sufficient income to pay interest on its First Mortgage Bonds, is that not correct?

A. No, I don't think that is correct.

Q. Why isn't it correct?

A. You have a little confusion here. You have got the same principle involved here as is involved in the case of interest on the NOT&M advances to the Missouri Pacific. Interest and dividends on the NOT&M subsidiaries was accrued on the NOT&M's books. Now, that was good income to the NOT&M, whether those vouchers were pulled out of the basket and paid or whether they were not. The amount of cash that the NOT&M had would not have been changed, no matter which vouchers were pulled out and paid. The NOT&M in effect got all the cash that these subsidiaries had, and their situation would not have changed a particle, no matter what vouchers had been paid or which ones had been left unpaid. Their income affected this interest and dividends. As I say, the method whereby the income of NOT&M reflected interest and dividends of its subsidiaries was not perfect. That was why the NOT&M Directors had to look at the consolidated figures to be sure they were getting the results of the operations of all the subsidiaries into their calculation. The figures of the NOT&M Railway, as a separate corporation, never reflected the picture, just for the very reason that all of the earnings of the earning subsidiaries were not passed on in the form of interest and dividends, and the deficits of the losing subsidiaries were not taken up, so that the earnings of the NOT&M Railway Company never reflected the complete picture, but it did reflect the accrual of the interest and the dividends of the subsidiaries where that was passed on to the parent company, and whether those vouchers reflecting that interest and those dividends were paid never made any difference in the income of the parent company.

Q. Isn't there a rule of the I.C.C. that provides that you cannot consider as an asset any payment of interest or

dividends unless it is actually paid or there is the prospect of immediate payment? A. No.

Q. There is not any such rule? A. No.

Q. Is there any rule that is substantially of that character?

A. There is a rule on dividends, which I think has been introduced in the record here, which provides that you can only accrue dividends under certain conditions. I think one of the conditions as to the accrual of dividends is that there must be reasonable expectation of payment. I don't recall that it says anything about immediate payment.

Q. All right. A. Now, the Brownsville, as I point out—

Q. (Interrupting) What is the rule about interest, first? Let's get that out of the way.

A. I don't recall what the rule about interest is, but I don't think there is any rule about interest that is along the lines that you suggest.

Q. There does not have to be any reasonable expectation then that the interest will be paid?

A. Not that I recall. I don't really have any rule on interest in mind. I never heard of such a rule on interest, but I know that many railroads did have accrued interest in their income accounts that ultimately was not paid. I have never heard of any rule that prevented if it was a good debt, and while it might not have been paid in cash, it might ultimately have been paid in securities in reorganization, or in some such way, but if it is a good debt, it is a good accrual.

Now, that rule about dividends that you have in mind is the reason why I introduced my Exhibit No. 46, to show as to Brownsville dividends that it was not the practice to pay them promptly, but they were paid sometimes, well, over two years after they were declared, so that when the Brownsville declared a dividend, a reasonable expectation of payment, as far as the Brownsville was concerned, meant that it might be paid any time within the next year or two, or maybe even longer, and unless there was reason to believe that Brownsville dividend could not be paid within two years or two and a half years, any accrual of a Brownsville dividend was, I believe in accordance with that rule.

Q. Now, let me read you the rule, and then see if your testimony is that way. This is from Comstock's Exhibit No. 42:

> "Dividends declared shall not be credited prior to actual collection, unless their payment is reasonably assured by past experience, guaranty, anticipated provisions, or otherwise."

A. Yes. That is the rule I had in mind.

Q. And you believe that even if you could not anticipate a payment of a dividend for two years by Brownsville, that you came within the provisions of that rule?

A. Yes, I would think you might clearly come within the provisions of that rule, because it contained the words "reasonably assured by past experience", and past experience on the Brownsville meant obviously that it might be a year or two, or even more, before you got your dividend that the Brownsville had always produced in the past.

Q. Is not Exhibit No. 46—and 46 is that which you were just talking about, the exhibit showing the payment of Brownsville dividends,—nothing more than a memorandum showing the dates on which vouchers issued against dividend declarations were listed from the aggregate pool of family line bills, in the manner and for the purposes set forth in my preceding question?

A. I don't know just what the purposes set forth in your preceding question were.

Q. Of course, I will have to interpolate that, because we digressed considerably. Let me withdraw that question. Mr. Wyer, I asked you, was it not a fact that whoever controlled the selection of family line bill vouchers that were to be paid, automatically controlled—took two bookkeeping results: one, if all vouchers representing interest payments and dividend distributions were paid, NOTM would report income in excess of fixed charges and could continue keeping a bookkeeping surplus; and, two, if on the other hand, only vouchers covering any other items were paid, NOTM would have no income from its investments in its subsidiaries and no bookkeeping surplus.

Now I want to ask you this additional question: Is not Exhibit No. 46 nothing more than a memorandum showing

the dates on which vouchers issued against dividend declarations were listed from the aggregate pool of family line bills, in the manner and for the purposes set forth in my preceding question?

The Court: Before you answer it, what is the Exhibit No. 46? I do not recall.

The Witness: That is my exhibit showing the dates that Brownsville dividends were declared and paid.

Inasmuch as my answer to your (addressing Mr. Biggs) preceding question was no as to both sections of it, I don't think that the second question makes any sense. The purposes of the preceding question seem to me obscure under those circumstances.

Q. Does not Exhibit No. 46 show the dates that these vouchers for dividends were actually paid? A. Yes.

Q. And it does not purport to show any date which, under the declaration of a dividend, the dividend was supposed to be paid?

A. I don't believe it does. I think that is shown in a different exhibit. I think for the most part these dividends were declared to be due as of a date prior to their declaration. I don't think Exhibit No. 46 shows those dates, but I think, by and large, these dividends were due immediately upon their declaration, because in most cases, the due date was prior to the date of declaration, but that is in another exhibit. We were interested here in showing the lapse of time from a practical standpoint. Obviously the dividends could not have been paid before they were declared, but since in nearly every instance they were due immediately upon declaration, by reason of these prior due dates, we thought the practical lapse of time would be shown by this exhibit, where we figure the lapse between the date of declaration and the date of actual payment.

Q. Is it not true also that the NOTM annual reports filed with the I. C. C. show that irrespective of what kind of vouchers were paid, NOTM continued from December 31, 1924 to December 31, 1932 to have a valuable but increasing aggregate of uncollectable vouchers which when transferred from the deferred asset account amounted, as shown by Comstock's Exhibit No. 37, to $15,659,743?

A. I think that is correct.

Mr. Biggs: That is all, Your Honor. I now move the Court to strike out investors' Group Exhibits Nos. 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, and 41, because the witness has testified that these were consolidated returns which included figures from the NOTM and also figures from the various subsidiaries of NOTM which have been identified in evidence.

The case before this Court involves two parties—the Missouri Pacific and the New Orleans, Texas and Mexico Railway Company, a single corporate entity. At the present time, on account of bankruptcy, both are represented by a trustee, but they are still single corporate entities, each one of them. The claim of the Missouri Pacific—

Mr. McConaughy: With Mr. Biggs' permission, I have two questions, and I have just one question to ask Mr. Wyer before he leaves the stand. He is trying to get the train tonight, and I would like to let him go.

Mr. Biggs: That is perfectly agreeable. Strike that all out, and I will start over again.

Redirect Examination,

By Mr. McConaughy:

Q. Mr. Wyer, I believe you have one correction in the testimony that you gave, have you not, concerning the time you were an officer of the Missouri Pacific?

A. Yes. I stated on my direct that I was not sure just when I resigned as Secretary and Treasurer of the Missouri Pacific, that I thought it was in 1938 or 1939, and I am advised that it was in 1941. I think November, 1941.

Mr. McConaughy: I have no further questions and may Mr. Wyer be excused?

The Witness: I wanted to ask you before—do you want to ask about that stuff you wanted me to get—these monies to be credited to the surplus account?

Mr. Biggs: Forget about it.

The Witness: Do you want that?

Mr. Biggs: No.

The Court: May Mr. Wyer be excused?

Mr. Biggs: He may.

The Court: You may be excused then, Mr. Wyer.

Mr. Biggs: I want to make this motion to strike, and then I am through for the day. I want to make this motion to strike these exhibits. I was interrupted, you remember. I guess that I should start over.

If Your Honor please, I move to strike Investors' Group Exhibits 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, [41,] and 41. Mr. Wyer has testified that all of these exhibits represent consolidated figures of the NOTM and various subsidiary companies which have been identified in evidence. This claim before the Court for adjudication involves a claim of the Missouri Pacific Railroad Company against the New Orleans, Texas and Mexico Railroad Company, both separate corporate entities, and this claim has no bearing, or is not against, and there is no legal liability on any of the subsidiary companies—and by subsidiary companies, I mean the companies subsidiary of NOTM or New Orleans, Texas and Mexico Railroad Company. As the evidence of Mr. Wyer indicates that these exhibits in question were a consolidation of certain figures representing values in NOTM and certain figures representing values in these subsidiaries, and as there is no possibility of identifying the figures pertaining to New Orleans, Texas and Mexico and the figures pertaining to the other subsidiaries, these exhibits do not show the exact or legal relationship existing between the separate companies and are not, therefore, admissible in evidence in a trial of issues such as are now before the Court. I therefore move that they be stricken.

Mr. McConaughy: Regarding that, Your Honor, it seems to me the exhibits are clearly pertinent to the issues. There is a charge that the Missouri Pacific over-reached the NOT&M; there is a charge of bad faith here; they

seek to draw in the Taylor against Standard Gas and Electric case and the doctrines there enunciated, and in order to clearly understand what the Directors were faced with, this background and the whole picture, the consolidated statements, I think are necessary.

The Court: The motion is overruled.

Mr. Biggs: May we have an adjournment at this time to sometime tomorrow morning? I will finish then.

The Court: Will we get through tomorrow, do you think?

Mr. Biggs: That is correct. In fact, if I am not executed on the basis of this promise, I think we will be through in an hour.

The Court: I never have held a night session as long as I have been on the bench, but I am tempted sometimes to run right on through, to get through with this thing.

Mr. Biggs: The situation is, Your Honor, that I have to go over Mr. Eckert's testimony and work out some questions in regard to him. I have not had a chance to do that.

The Court: Can we adjourn tomorrow at twelve o'clock?

Mr. Biggs: So we will be through by twelve o'clock, you mean? I am practically positive of that, yes.

Mr. Kitchel: We would like to have it made a condition, Your Honor, that if we are adjourning now at a quarter of 4:00, that the condition be that this case be closed by twelve o'clock tomorrow.

The Court: Well, that is the order. We will close, we will finish at 12:00 tomorrow. Announce an adjournment until tomorrow morning at ten o'clock.

Adjourned at 3:45 P. M., March 23, 1945, until 10:00 A. M., March 24, 1945.

Met, pursuant to adjournment as above, on March 24, 1945, at ten o'clock A. M., whereupon the following proceedings were had:

MARTIN ECKERT,

having been heretofore duly sworn, and upon being recalled, testified as follows:

Further Cross Examination

By Mr. Biggs:

Q. Mr. Eckert, you have already been a witness here?

A. Yes, sir.

Q. Have you a copy of your exhibits? A. Yes.

Q. I mean by that the exhibits that were introduced by the Institutional Group. A. No.

Q. I mean, just the ones that you introduced and prepared? A. Yes.

Q. You have those? A. Yes.

Q. Your Exhibit 1, which consists of five pages, sets out certain corrections of figures pertaining to the Comstock Exhibits; is that correct? A. Yes.

Q. Do any of these corrections alter Comstock Exhibits in any substantial way? A. They do not.

Q. Are not these corrections obviously mechanical errors in unimportant amounts?

A. Mechanical or typographical errors, yes. Some of the corrections that we called attention to were made as the result of exceptions taken by the Commission, Interstate Commerce Commission, and so forth.

Q. Take, for example, page 2: The first item on that page is a correction which was made after the original annual report was filed; is not that true?

A. That is correct.

Q. This exhibit referred to was based on the figures in the annual report? A. Yes.

Q. So that, in preparing the exhibit from the annual report, so far as the preparer of that exhibit was concerned, he was entirely correct?

A. He was correct in so far as the records shows the information.

Q. In the annual report? A. Yes.

Q. You have read into the record what you called an omitted part of the record, which you say in your testimony should have been included in Comstock Exhibit 134: Does the word "cash" appear anywhere in the phrase that you have added? A. It does not.

Mr. McConaughy: I don't understand the question.

Mr. Biggs: I think the next question will clear it up.

Q. Does the addition of this omitted phrase in any way alter the fact that the transaction in question was accomplished wholly by journal entries?

A. No. The transaction was accomplished by a journal entry, but I would like to add there that, as I stated bebefore, I thought it was similar to a cash transaction, because the amount involved and the manner in which it was handled indicated that the money could have well been advanced by the Missouri Pacific to the Gulf Coast and then it would be a cash transaction, but the transaction was handled by the means of a journal entry.

Q. Under the actual facts the way it was handled there was no cash transferred between any of the parties?

A. I said it was the same as cash.

Q. But there was no actual cash?

A. No, the cash was not passed.

Q. There was no cash passed.

Mr. McConaughy: When you referred to the omitted phrase you referred to the line which is omitted in the second sheet of Comstock Exhibit 134; is that correct, Mr. Biggs?

Mr. Biggs: No; there are other excerpts, too.

Mr. McConaughy (to the witness): Did you understand what he was talking about?

The Witness: I thought, when he said "phrase" he was referring to the word "cash", which appeared in a previous question.

Mr. McConaughy: What were you referring to as the "omitted phrase"? I would like to have the record show.

Mr. Biggs: He testified on direct examination, if I re-

member it correctly, that we had not included in that exhibit the entire statement of Mr. Wyer explaining the entry.

Mr. McConaughy: Mr. Eckert testified that, at the foot of sheet 1 of Comstock Exhibit 134 there appeared a paragraph, and only one paragraph, from a memorandum prepared by Mr. F. P. Johnson. You are talking about that paragraph?

Mr. Biggs: Yes.

Mr. McConaughy (to the witness): Did you understand that, Mr. Eckert?

The Witness: No, sir, I didn't. He was asking about cash.

Mr. Biggs: That is what I am talking about.

The Witness: It was a cash transaction.

Mr. McConaughy: Ask the question again, because I don't think the record is clear on it.

Mr. Biggs: Q. In any of the omitted facts, figures, memorandums, statements, or anything else that you testified to in regard to this transaction, does the word "cash" appear? A. It does not.

Mr. Biggs: Off the record.

(Here ensued colloquy between Mr. Biggs and Mr. McConaughy.)

Mr. Biggs: Q. Mr. Eckert, did the financial condition of the New Orleans, Texas & Mexico Railway Company improve after October 31, 1932, and up to date of bankruptcy? A. Apparently not.

Q. In fact, it deteriorated, didn't it?

A. I would have to verify that from the records, but they had a depression on in 1931 and 1932.

Q. We had a bank holiday in the Spring of 1933, didn't we? A. Yes.

Q. So, there was no improvement in the financial condition; you will go that far?

A. I say apparently not. I would have to look at the records to see.

Q. Now, Mr. Eckert, on page 880 you testified that the New Orleans, Texas & Mexico Railway Company was unable to pay to the International-Great Northern Railroad Company $1,261,000. that it owed it at that time, did you not? A. Gulf Coast Lines?

Q. Gulf Coast Lines. Did you testify to that?

A. Yes, I did.

Q. Did not Mr. Johnson, the Chief Financial Officer of the Missouri Pacific—Chief Accounting Officer, is that a better title? A. Chief Accounting and Financial Officer.

Q. Chief Accounting and Financial Officer, in the Institutional Investors Exhibit No. 3, make the following statement: "The indebtedness of the various Gulf Coast Lines to the International-Great Northern Railroad represented by bills, interest on unfunded debt, and miscellaneous advances increased from time to time by reason of the inability of the Gulf Coast Lines to pay the amount in cash, until in October, 1932, the amount involved was $1,261,009.84": That statement you are familiar with? A. Yes.

Q. And you agree with that statement?

A. Yes. That was the amount that was agreed upon in settlement between the I.-G. N., Gulf Coast Lines and Missouri Pacific.

Q. You agree with the statement that the Gulf Coast Lines were unable to pay the amount in cash?

A. Yes, he made the statement. I was there at the time and I think the amount was correct which was agreed upon between the Missouri Pacific and Gulf Coast Lines and I.-G. N.

Q. Will you please tell me, Mr. Eckert, in view of these facts, how the New Orleans, Texas & Mexico Railway Company was able to pay the Missouri Pacific $79,000. on January 3, 1933, and $175,000. on March 29, 1933?

A. The transactions to which you obviously refer took place prior to that time.

Q. That is right.

A. There might have been cash accumulated that they could pay. I don't recall. I don't have any financial exhibit before me to indicate what their financial position was at that time, but they evidently had the money or they couldn't have paid it.

Q. You have testified that the financial condition of the New Orleans, Texas & Mexico didn't improve over that period and you have testified that they were unable to pay cash to the International-Great Northern in October, 1932. We know definitely that the banks were closed in the Spring of 1933, which certainly didn't add to the financial condition of the New Orleans, Texas & Mexico, and, yet, the New Orleans, Texas & Mexico paid in cash, in January and March, very substantial amounts to the Missouri Pacific: Can you explain that? A. No, I can't.

Q. Now, Mr. Eckert, in regard to your Exhibits 8, 9, 10, 12, 13 and 14, they all pertain, do they not, to remittances by the New Orleans, Texas & Mexico to the Missouri Pacific of various amounts of money? A. Yes.

Q. And they are all directions to you as the Accounting Officer of the New Orleans, Texas & Mexico as to how these remittances should be credited against advances by the Missouri Pacific to the New Orleans, Texas & Mexico?

A. That is correct.

Q. I asked you this morning if you could find in your files the letters of transmittal in regard to these remittances, did I not? A. Yes.

Q. Were you able to find them? A. No, sir.

Q. To the best of your recollection, how were these amounts transferred?

A. By telegraph. I am not sure about that, but I think they were probably transmitted by telegraph.

Q. And there were no letters of transmittal?

A. No letters of transmittal.

Q. Do you remember, Mr. Eckert, in regard to any of these items ever directing Mr. Johnson as to how these payments should be credited against advances?

A. I don't recall ever calling attention to or directing how these amounts should be applied. The directions came from the St. Louis office.

Q. The directions came from the St. Louis office?

A. Yes.

Q. And you acted in accord with those directions?

A. Yes; subject to check, of course.

Q. Subject to check as to the mechanical figures?

A. Yes.

Q. But as far as the policy of whether these payments should be credited against principal or interest, that was decided by the Missouri Pacific office?

A. Decided by the St. Louis office, yes.

Q. Decided by the St. Louis office? A. Yes, sir.

Q. I call your attention to Exhibit No. 7: What is the date of that exhibit? A. August 27, 1931.

Q. Did that exhibit institute a change in policy as far as the crediting of these remittances against the advances of Missouri Pacific?

A. Yes. Prior to that time, except as to the amount shown in the letter dated May 4, 1931, Exhibit 6, they were all applied to principal, and after May 4, 1931, some of the amounts were applied to partial payment of interest.

Q. And the first one, was that the August letter?

A. No, the first one was May 4, 1931.

Q. It was in May, the first direction of change in policy? A. Yes.

Q. Mr. Eckert, I will show you Group Exhibit No. 31. This exhibit is a summarized setup of the proposed financial policy of the New Orleans, Texas & Mexico for the year 1929, isn't that correct?

A. Well, I have not analyzed this exhibit.

Q. I see. I will strike that question out.

Mr. McConaughy: I don't think Mr. Eckert knows anything about the statement, or had anything to do with it.

Mr. Biggs: Q. Take the statement as it is; it has been identified by Mr. Wyer and testified to by him. From an examination of that statement, Mr. Eckert, will you please tell me what direct benefits the Missouri Pacific received?

A. I would have to take this statement and analyze it.

Mr. McConaughy: I object to that question. It is not proper cross examination. He didn't testify about this exhibit at all. It is one of Mr. Wyer's exhibits.

The Court: Sustained.

Mr. Biggs: I would like to offer Mr. Eckert as a witness on behalf of Mr. Comstock.

The Court: Very well.

Direct Examination of the Witness,
on Behalf of Comstock:

Mr. Biggs: Q. Mr. Eckert, will you please examine that statement and state what direct benefits the Missouri Pacific received?

A. I don't believe I can answer that question. They received a dividend of $1,038,303. that is, according to this, under the caption "Cash requirements". Down below it says "Advance required from Missouri Pacific during 1929 $1,119,449.", but I say I would have to verify those figures.

Q. I am not asking for figures, but assuming the figures are correct. Let us assume that the figures are entirely correct. The Missouri Pacific received a direct benefit of a little over ninety-three per cent. of the dividends, didn't they? A. Yes, of ninety-three per cent. of the dividends.

Q. And the Missouri Pacific received as a direct benefit an obligation of the New Orleans, Texas & Mexico which bore interest at the rate of six per cent., in the amount set out as advanced; is not that true? A. Yes, sir.

Mr. McConaughy: I object to this line of questioning, Your Honor. If you will look at the exhibit you will see it is headed Estimated Requirement, and he is proceeding on the theory that those were actual payments and receipts.

Mr. Biggs: I said assuming it is correct. Mr. Eckert is an expert witness and fully qualified.

Mr. McConaughy: He ought to have some proof before he asks a thing of that kind.

The Court: He may answer.

Mr. Biggs: Q. Is not that correct?

A. What is the question?

Q. I will reframe it. In regard to the advance item shown on that exhibit, let us assume that that is correct, did not the Missouri Pacific secure a direct benefit, to-wit, an interest paying obligation of the New Orleans, Texas & Mexico in that amount? A. In what amount?

Q. In the amount of the advance, assuming it is correct. I am not asking whether the item is correct or incorrect.

A. On the assumption that the statement is correct, yes.

Q. Assuming that all of these figures are correct, did Tom Smith, the owner of a thousand dollar Missouri Pacific Serial 5¼% Bond, secured by ten shares of common stock of the New Orleans, Texas & Mexico, secure any direct benefit?

A. I will have to make a further analysis of Tom Smith. I can't see where they would have any direct benefit.

Q. I am using Tom Smith, any owner of Serial 5¼% bonds. Can you see how he would get any direct benefit?

A. No, sir.

Mr. Biggs: That is all.

Redirect Examination by Mr. McConaughy:

Q. Mr. Eckert, do you have Comstock Exhibit 44? I will show you a copy of it as revised, together with a memorandum which you made for me about it.

(To Mr. Biggs) Do you have the original exhibit 44?

Mr. Biggs: Yes (handing Exhibit to Mr. McConaughy).

The Court: Pardon me. I will have to interrupt the proceeding.

(At this point the Court took up another matter, after which the hearing was resumed.)

Mr. McConaughy: Q. Mr. Eckert, I will ask you to look at Comstock Exhibit 44, which was, among other exhibits, corrected by Group Exhibit No. 1. After you have had a chance to examine that, do you say that those corrections were merely mechanical or typographical?

A. There are some that I apparently overlooked. I didn't prepare that exhibit myself, and there are some errors in this that are rather vital.

Q. You say you did not prepare this Comstock Exhibit 44? A. It was prepared under my supervision.

Q. That (indicating exhibit)?

A. That was prepared by Mr. Delaney; I mean the corrections.

Q. What have you to say about the errors corrected there?

A. "New Orleans, Texas & Mexico Railway Company" reading "Unadjusted other debits family line bills due from St. LB&M and Beaumont Sour Lake & Western as disclosed by subsidiary reports to the Interstate Commerce Commission."

In the fourth column where they attempt to show the amount of family line vouchers they have also included other accounts, indicated in pencil on the exhibit, that have no bearing on the family lines as indicated by the Interstate Commerce Commission reports.

Q. Is it not true that every single figure in that column is wrong? A. Yes.

Q. By a substantial amount? A. Yes.

Q. It includes other items not puroprted to be covered by the heading? A. Yes.

Q. When we go to Comstock Exhibit 134, you have already noted serious errors in that, haven't you? A. Yes.

Q. Mr. Biggs has just spoken to you about Comstock Exhibit 134 and the fact that the transaction which resulted in the New Orleans, Texas & Mexico becoming obligated for $1,261,000., as a mere entry in the journals: You recall that, don't you? A. Yes.

Q. As a matter of fact, is it not true that the items for which the New Orleans, Texas & Mexico and its subsidiaries were obligated to the L.-G. N. represented cash items which the L.-G. N. had furnished to those companies, with the exception of interest charges?

A. With the exception of interest.

Q. With the exception of interest. Mr. Biggs has referred to your statement which he says is at page 880 of the transcript. I have not had a chance to check it, but he said that you stated that the New Orleans, Texas & Mexico was not in financial condition to pay it, and he also referred to Mr. Johnson's memorandum in that respect. Was not your point there that the New Orleans, Texas & Mexico did not happen to have the cash on hand to pay it; you didn't mean to imply that the New Orleans, Texas & Mexico was insolvent, did you? A. Oh, no.

Q. Or didn't have assets to pay it? A. No.

Q. It was a mere matter of not having the cash on hand at the time to make that $1,200,000. payment?

A. That is right.

Q. He also referred to Group Exhibits 8 to 15, being certain memoranda or letters written by Mr. Johnson to you, indicating how the Missouri Pacific had treated certain repayments on account of the advances? A. Yes.

Q. You said that when you got those letters you checked them? A. We did, sir.

Q. You didn't mean to imply that you were taking orders from Mr. Johnson, you, the Auditor of the N. O. T. & M., as to how to keep your books, did you?

A. No, sir; I was not taking orders from Mr. Johnson.

Q. When you got that memorandum from Mr. Johnson you, as Auditor of the New Orleans, Texas & Mexico, looked into that to see whether that should be interest or should be principal; isn't that correct?

A. Except as to the first few payments, which were applied as principal.

Q. That was all right as far as you were concerned, to have it apply to principal?

A. Yes, but the items were checked when we got the letters and if there had been an error we certainly would have called attention to it. As it happened, though, there was never an error.

Q. You were Auditor of the New Orleans, Texas & Mexico? A. Yes.

Q. You didn't take orders from Mr. Johnson as to how to run the books of the New Orleans, Texas & Mexico, did you? A. No, sir.

Mr. Biggs: You did take orders from Mr. Johnson, though?

Mr. McConaughy: Wait a minute.

Mr. Biggs: Excuse me.

Mr. McConaughy: Have you Group Exhibit 31 with you? Mr. Biggs asked you to assume that the figures on that were correct: The fact is that that exhibit is a mere estimate; it speaks prospectively, doesn't it? A. Yes.

Q. Isn't it also true that that provides for—anticipates additions and betterments in substantially greater amount than the advances listed on that exhibit? A. Yes.

Q. And that ought to be of some value to a stockholder, should it not? A. Yes.

Mr. McConaughy: I think that is all, Your Honor.

Recross Examination,

By Mr. Biggs:

Q. Did I understand from your testimony that you never took any orders from Mr. Johnson?

A. I never took any orders from Mr. Johnson as to the accounting, because we were governed by regulations of the Interstate Commerce Commission. Mr. Johnson was my superior in office. He was Chief Accounting and Financial Officer of the Gulf Coast Lines, of the Texas Lines, and he was also later Vice-President. He was my superior officer.

Q. If Mr. Johnson told you to credit a certain amount to principal and a certain amount to interest, and assuming there was an amount of interest and principal due at that time, would you dispute that matter with him?

A. If it had been incorrect, I certainly would.

Q. If the figures had been incorrect, but would you dispute the policy? A. I wouldn't dispute that policy.

Q. You would carry out his order in regard to that?

A. I would, yes, but if there was any error in the matter of interest or any error had been made, if he said we should have credited a different amount, I certainly would have called attention to it. As it happened, it was all right.

Q. So there is no doubt about what we are going into there, take Exhibit No. 7.

Mr. McConaughy: Group Exhibit 7?

Mr. Biggs: Yes.

Q. I will read that to you. It is addressed to Mr. Eckert, dated August 27th, 1931.

"Cash remittance of $200,000. received today will be applied $192,387.93 in payment of interest to July 31, 1931 and $7,612.07 in part payment of advance made January 31, 1929."

That is correct isn't it? A. Yes.

Q. Signed by F. P. Johnson? A. Yes.

Q. Now, if these two figures, $192,387.93 and $7,612.07 had not added up to $200,000. you would have called Mr. Johnson's attention to that, wouldn't you?

A. No, if the amount—

Q. I mean if there had been a mechanical error.

A. No, not only that—

Q. Just a minute. You would have done that, would you not?

A. Yes, if there had been a mechanical error I would call attention to it.

Q. And if the interest to July 31, 1931 had not amounted to $192,387.93, but had amounted to $192,379.93 you would call his attention to that?

A. Yes, I would call his attention to it.

Q. You would have done that. But if, instead of setting out the allocation to interest and principal in this fashion, he had allocated interest up to July 15, 1931 and allocated the balance to principal, you would not have questioned that? A. I would not have questioned that.

Q. That was an order from Mr. Johnson on policy, isn't that correct?

A. Well, probably so, but I want to say this, if the interest accruals which he took up on his books didn't agree with ours—

Q. You would have called his attention to that?

A. We would have called attention to any difference in interest and in interest accruals, because we were accruing—Missouri Pacific was accruing interest on its books and we were setting it up on our books. This morning I checked to see whether the interest agreed on both books, and it does.

Q. All you checked was the mechanical end of the game?

A. I had no reason to call attention to Mr. Johnson's decision on how to allocate this money. If he said to pay $500,000. on principal and apply $500,000. on interest, that is what I did.

Q. If he said to apply a certain amount on interest that is what you did?

A. Yes, only that the interest always agreed.

Q. You applied it on interest, you didn't apply it on principal; isn't that true? A. Yes.

Q. Now, Mr. McConaughy raised some question because I assumed that those figures were correct. You have checked Comstock Exhibit 27, haven't you, or had it checked as to accuracy of the figures (handing exhibit to the witness)?

A. If there are no exceptions in that exhibit I filed then it is correct.

Q. I don't see any exceptions, Mr. Eckert. If I am in error in that I will be glad to have my attention called to it.

A. We checked this exhibit—I am not so sure that we did. Mr. Peet is there, he can say whether we checked it or not.

(Here ensued private colloquy between Mr. McConaughy and Mr. Biggs.)

Q. Mr. Eckert, this exhibit contains extracts of certain receipts and disbursements recorded in the New York and/or Cleveland Assistant Treasurer cash book A, during the period from April 1, 1925 to March 31, 1933, known as Comstock Exhibit 27.

In February, 1930—reading from said exhibit—the New York Treasurer of the New Orleans, Texas & Mexico Railway Company had on hand at the beginning of the month $13,565.35. During the month there was an advance of $260,000. There were miscellaneous receipts of $311.14. Total receipts $260,311.43, or a total available during the month of $273,876.49.

During the month the treasurer issued check No. 1481 for $259,575.75 drawn on Irving Trust Company, in payment of a dividend of 1-¾ per cent. on the N.O.T. & M. common stock.

Does not this entry show that the Missouri Pacific advanced to the New Orleans, Texas & Mexico $260,000. and that there was a dividend paid of $259,575.75?

Mr. McConaughy: You had better let Mr. Eckert look at the exhibit, Mr. Biggs. That was when?

Mr. Biggs: February, 1930.

A. Yes, that shows a dividend of 1-¾ per cent., $259,575.75—

Q. And an advance—

Mr. McConaughy: Let him answer, please.

The Witness: At least, it is shown here that way. The Irving Trust Company dividend account as a disbursement out of the New York Office.

Mr. Biggs: Q. It also shows an advance, doesn't it?

A. There was an advance of $260,000. That is at the beginning of the month, $13,565.35; miscellaneous receipts, $311.14, total receipts $260,311.43.

Q. As the result of the transactions set out, did not the Missouri Pacific receive a direct benefit of ninety-three and a fraction per cent. of the dividend paid?

A. I don't recall whether the amount of stock that the Missouri Pacific owned, amount of N.O.T. & M. stock that Missouri Pacific owned in February, 1930, was ninety-two or ninety-three per cent.; approximately that. So, they received a benefit of that ninety-three per cent. of the dividends.

Q. And they received a direct interest paying obligation of the New Orleans, Texas & Mexico Railway Company in the amount of $260,000.; is that true? A. Yes.

Q. What direct benefit did Tom Smith, or any other bondholder of the Missouri Pacific Serial 5¼% bonds, which were secured by ten shares of common stock of the N.O.T. & M. Railway Company, for each one thousand dollar bond, receive from this transaction?

A. I don't see that they received any benefit from it.

Mr. Biggs: That is all.

Redirect Examination by Mr. McConaughy:

Q. Mr. Eckert, I show you Group Exhibit 32, which Mr. Wyer offered in evidence: Do you find that $260,000. advance that Mr. Biggs was just asking you about, on that Group Exhibit 32? A. Yes; February 28, 1930.

Q. At the time that advance was made what were the aggregate advances from Missouri Pacific to New Orleans,

Texas & Mexico as compared with the aggregate additions and betterments since the last financing, as shown on that exhibit?

Mr. Biggs: I object to that question because, according to this exhibit, it shows the increase—

The Court: According to what exhibit?

Mr. Biggs: Exhibit 32. According to that exhibit it shows the increase in investment in the Gulf Coast Lines. It does not show the increase in investments in the New Orleans, Texas & Mexico Railway Company.

Mr. McConaughy: He asked this witness if the stockholder was benefited in any way by this transaction and I am trying to point out whether or not he was benefited.

The Court: He may answer.

Mr. Biggs: Exception.

Mr. McConaughy: Q. State the two figures.

A. The accumulated amount of advances by the Missouri Pacific to the New Orleans, Texas & Mexico, at February 28, 1930, was $3,370,000. Cumulative increase in investment of Gulf Coast Lines, same date, $6,160,263.

Mr. McConaughy: That is all.

Mr. Biggs: That is all.

Mr. McConaughy: Have you closed your case?

Mr. Biggs: As far as evidence is concerned, yes.

Mr. McConaughy: Before we get away from this evidence portion of the case, in examining the transcript there may be some question about the admission of Group Exhibits 1 to 47. Just to make it absolutely clear, we offer Group Exhibits 1 to 47, inclusive, in evidence.

The Court: Very well.

Mr. Biggs: And also, for the same reasons, I wish to offer Comstock Exhibits 1 to 136, inclusive, in evidence, except Exhibits 1 and 43.

(Group Exhibits 1 to 47, inclusive, last offered in evidence.)

(Comstock Exhibits 1 to 136, except Exhibits 1 and 43.)

The Court: Is there anything else?

Mr. Bigge: I have a motion to make.

Mr. Kitchel: Your Honor, if the Objector has closed his case, in behalf of the Group of Institutional Holders of the Missouri Pacific First and Refunding Mortgage bonds, I now move that the Court overrule and dismiss Comstock Objection 19 and the related objections on the merits, in that he has failed to make a case, or even a prima facie case, and any such testimony as he has produced has been fully answered and rebutted.

I also, at this time, renew the motion made at the close of Objector's case in January, to-wit, that the said objections above mentioned be dismissed and overruled on the ground of laches.

I don't care to argue those motions now. I propose to do that in a brief.

The Court: You will file a written motion?

Mr. Kitchel: If Your Honor prefers it that way.

Mr. McCaffery: The Reconstruction Finance Corporation desires to join in the motion just made by Mr. Kitchel.

Mr. Bigge: Now, if Your Honor please, in regard to the question of the brief in this case: I am faced with this situation, that there are in my office Mr. Dunbar and Mr. Coburn and Mr. Stone just out of law school. Mr. Dunbar's health is not any too good; it is rather poor health. On account of other matters pending in the office I am the only one who has any time to devote to this Missouri Pacific situation.

There has been a tentative setting of our objection in regard to Allegheny for the 23d of April. It will be impossible for me to prepare that case and at the same time prepare a brief on this case just submitted. As I see it from a practical situation—assuming that Your Honor doesn't force me to try to do both things at the same time, there are three solutions, and Your Honor can determine

which is the best one, so to speak. They are (a) a reasonably long continuation of the Alleghany case; (b) granting to me—assuming I have to file the first brief—say, seventy-five days, or (c) directing that counsel for the Investors Group, Institutional Group, file the first brief. As this matter involves the question of validity of the claim it is certainly logical that the proponent of the claim file the first brief, and if that is done and Mr. Kitchel is given forty-five days, for instance, to file the first brief, I could then be in a position within a reasonable time to file a reply brief.

Those are the three solutions, as I see it, assuming, of course, that Your Honor is not going to force me to do both of these things at the same time.

Mr. Kitchel: Your Honor, taking up the third suggested solution, that the Group file its brief first, this is a hearing on objections to the Plan. The Objector should file his brief first. As a matter of fact, in the Order of October 31, that was the procedure prescribed. The Objector was to file brief on a certain date and we had until January 2, to answer. The situation now is the same as it was then, the Objector should sustain his objections before we are obliged to reply.

As to the second solution, that he have seventy-five days: Your Honor will recall that in the January hearings we were delayed; the proceeding was delayed from time to time merely because the case had not been properly prepared, and as the witnesses were examined more papers were requested from Houston, and delays were occasioned. I am not accusing Mr. Biggs in that connection. In this hearing this week there have been delays which have not been Mr. Biggs' fault—I won't say anything about that, but in view of the protracted length of time that this proceeding has taken I should very strongly object to a further delay of seventy-five days for the filing of a brief. I think three weeks should be the limit.

Now, if the Alleghany hearing could be postponed so that Mr. Biggs would have his three weeks in which to prepare their brief, I think that would be a very good solution.

The Court: Is that agreeable to you?

Mr. McDonald: There are at least two additional solutions that have not been mentioned here. This matter was discussed with me in the recess, by both counsel, and has been discussed with Mr. Leisure and Mr. Lumbard. Our attitude is that we want to be reasonably reasonable, but we are not prepared, and we have so told counsel, to have our client shoved around if we can help it.

I think there are three solutions that have not been mentioned. One is that Mr. Brandwen's position in this case is not very clear. Mr. Biggs didn't mention Mr. Brandwen in stating what the problems were with reference to the next hearing. There is no withdrawal of Mr. Brandwen, that I know of, on the record, and we had a flat agreement with Mr. Brandwen that he would be ready to proceed on April 23d.

A second solution that has been mentioned is that if counsel is, as he said, and I am sure he is, extremely busy, there must be other counsel in St. Louis who could be retained as co-counsel with him, and who could assist in disposing of a very important matter as quickly as possible.

The third solution, that has not been mentioned, is to sustain the motion Mr. Leisure made to dismiss the objections directed to Alleghany, and in that connection, on the whole record before the Court at this time, the evidence offered in support of Comstock Objection 19 and the evidence contrary thereto, we wish to renew Mr. Leisure's motion on behalf of Alleghany that the matter be dismissed.

Mr. Biggs: If the Court please, I guess it is all right to state this on the record, but it doesn't have any real bearing on this case. I have a matter for Mr. Graham, who is in the Navy. I might also state that we have four of our partners, who are in the Navy and Army. We are trying to handle their business as well as our own work. I am handling one matter for Mr. Graham, which involves Navy and Marine negotiations in Washington. It had to be postponed on account of this trial, and I expect to go to Washington as soon as I have any free time. If I could have reasonable latitude, assuming Your Honor wants me to write the first brief—what I had in mind was

going to Washington and taking care of that case, then going on to New York and going over the matter of the stipulation with counsel for Allegheny. Now, what will come out of that conference in regard to the stipulation Your Honor well knows is in the lap of the gods, so to speak, but I think there is reasonable probability of working out a stipulation which will result in very little testimony. I may be optimistic in regard to that, but I want to give Your Honor the full picture as much as I humanly can.

Mr. McDonald: We recognize the possibility of that. As a matter of fact, we have been working on the preparation of our part of the case for several weeks, and in connection with that there have been a good many exhibits that we would have prepared but which we have deferred preparing until we could discuss the stipulation. I think that conference might be very productive of saving a great deal of time of the Court.

Mr. Kitchel: Your Honor, in connection with this time for filing a brief, we are anxious to have this Plan progress in one way or the other. If Your Honor is going to approve it, or if he is going to disapprove it, we would like to have a decision as soon as possible. As you know, this reorganization has been hanging fire for some twelve years. We think that should be taken into consideration. We think that is perhaps a little more important than some of the engagements Mr. Biggs has mentioned, and I hope that Your Honor will prescribe that his brief should be filed in, say three weeks, and we would like to have the same time to reply.

Mr. Biggs: If Your Honor please, as I understand the record to date, this matter, if there is an appeal taken by Mr. Kitchel or by myself, as the result of Your Honor's decision, will go up on a separate record and separate appeal, and there is no reason why Your Honor in the intervening period can not go over the brief and record in this case and decide whether you want to affirm the plan or reject the plan. That was the purpose of Mr. Homire's suggestion. And the same thing pertains to Allegheny.

That is going to be a separate record, separate brief and separate appeal by either party after you have decided it. I have no desire to delay the matter.

The Court: I appreciate your difficulty, Mr. Biggs, about your partners being away, but here is a matter that has been in Court for twelve years.

I don't know what the situation is about Mr. Brandwen.

Mr. Biggs: He is no longer participating.

The Court: He is still attorney of record.

Mr. Biggs: Only as associated with me. I am the attorney of record and he is merely on the record as associate co-counsel.

The Court: I don't want to be inconsiderate. I realize your position. I do think it is important that this should be given first consideration.

How long will you be in Washington on the matter you are going on, and when are you going to Washington?

Mr. Biggs: It depends on what Your Honor decides to do. If I have to write the brief I can't go to Washington. If I have to write the brief in thirty days it is going to be a tremendous job.

The Court: Is the Washington matter a matter that can be postponed; what is the nature of it, re-negotiation?

Mr. Biggs: I am not saying I have to go to Washington at this particular time. The only reason I brought it up was that I could go from there to New York on the Alleghany matter.

The Court: I am in difficulty about giving another setting. Mr. Leisure suggested some date—I have forgotten what the date was, but it seems to me it was a few days earlier than the 23d. I asked about the 23d and he said that would be agreeable unless I heard from him to the contrary.

(The Court here examined the docket.)

I wonder if it would not be better to let that setting stand at this time, and if possible I could give you some other setting—if I can arrange to give a setting about two

or three weeks after, in the middle of May, would that be convenient to counsel?

Mr. Biggs: They are not interested in the Alleghany matter. Mr. McDonald is the only one interested in it.

Mr. Kitchel: We are not interested in that, Your Honor.

Mr. Biggs: It seems to me the simplest solution is to let Mr. Kitchel file the first brief.

Mr. Kitchel: That suggestion is entirely out of order. It is not orderly procedure.

Mr. Biggs: While it is not quite orderly procedure, I agree with Mr. Kitchel in that statement, but it is a very practical procedure—

The Court: Well, it is not going to be done.

Mr. Biggs: I was trying to be expeditious in making this suggestion.

Mr. McDonald: We will try to fit our schedule to anything the Court says, and if the middle of May is available, if it becomes available—

The Court: I am looking at my docket for the week.

Mr. Biggs: I might make this as a practical suggestion—

The Court: How many weeks will this next hearing take?

Mr. Biggs: That is what I was coming to right now. Just assume you are going to direct that I file the first brief within a reasonable period of time. As soon as I get through with that brief I will then take up—I will go to Washington, and see Mr. McDonald and after we have conferred in regard to the stipulation both of us can give you a much better opinion as to how long it is going to take. Let us assume perfection, as far as the stipulation, et al. is concerned. That is a pretty strong assumption.

The Court: I will let it go for the 23d, and you gentlemen can get together.

Mr. Biggs: I can conceive how this case could be tried in a day.

Mr. McDonald: I can't conceive that. But keep the setting as it is and hold it for later discussion.

The Court: There has not been any order made, but I made the statement to Mr. Leisure.

Mr. McDonald: Would the Court like an order on that? If it is all right, I will do that on Monday and mail it back.

Mr. Biggs: For the record, so there will be no misunderstanding, I am going to devote my time to the preparation of this brief.

The Court: How much time do you think you will need to write that brief?

Mr. Biggs: How much time I could use in writing the brief, I will say about six months, but a minimum of thirty days, as to how much time I need, the absolute minimum. I have to go through all these exhibits and work it out. It is a tremendous record to try to write any kind of a brief at this time.

Mr. Kitchel: Mr. Biggs has been active in this claim at least since October. He ought to be pretty familiar with the facts by this time. I think thirty days is a little too much.

The Court: He may have thirty days and you may have thirty days to answer, and if you can get together and assure me of a hearing in a day I will try—

Mr. Biggs: Understand, I am not going to work on the Alleghany case until after I get the brief out.

Mr. McDonald: On the 23d of April we will announce ready.

The Court: I expect to be advised ahead of time.

Mr. McDonald: Yes. At the present time, subject to what can be worked out by stipulation, we will be ready on the 23d to proceed.

The Court: The hearing is reset until April 23d.

Which was all of the proceedings had upon the hearing.

(Memorandum relating to Exhibits printed in a Separate Volume.)

There is printed in a separate volume all the exhibits filed by all parties to the hearings before the District Court held in January 1945 and thereafter on Objection No. 19 and related objections of Andrew W. Comstock to the Plan of Reorganization. Said separate volume is to be deemed as much of the Printed Record as if the matters contained therein were printed herein.

(Opinion of District Court on approval of Plan of Reorganization.)

(Filed December 21, 1945.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

The matter of the approval of a plan of reorganizatio for the principal debtors, the Missouri Pacific Railroa Company, the New Orleans, Texas & Mexico Railway Com pany and the International-Great Northern Railroad Com pany, and their various subsidiary companies (except th Missouri-Illinois Railroad Company) has been the subjec of two prior opinions of this Court. See "In the Matte of Missouri Pacific Railroad Company," 39 F. Supp. 43 and 50 F. Supp. 936. Since the date of the last opinion b this Court in July of 1943 this matter has been back to th Interstate Commerce Commission for further considera tion, and after hearings the Commission has forwarde its Supplemental Report and Order of July 4th, 1944, an its Third Supplemental Report and Order of October 9t

1944, containing a revised plan of reorganization. Subsequently, pursuant to directions of this Court, all parties in interest have been given the opportunity to file objections, and the following have availed themselves thereof:

(1) Missouri Pacific Railroad Company, Debtor;

(2) Protective Committee for holders of Common Stock of Missouri Pacific Railroad Company;

(3) Protective Committee for Missouri Pacific Preferred Stockholders;

(4) Group of individual owners and holders of 5½%, twenty-year Convertible Bonds, Class "A," of Missouri Pacific Railroad Company;

(5) John M. Balliet, as holder of Missouri Pacific 5½% Convertible Bonds and other securities;

(6) St. Louis Union Trust Company, Trustee for, and Roland C. Behrens, et al. as Committee for holders of Little Rock & Hot Springs Western Railroad Company First Mortgage 4% Gold Bonds;

(7) Irving Trust Company, Trustee under the N. O. T. & M. Mortgage;

(8) Protective Committee for the holders of First Mortgage Bonds of International-Great Northern Railroad Company, a debtor herein;

(9) Missouri Pacific Railroad Company 5¼% Serial Bondholders' Committee; and

(10) Andrew W. Comstock, holder of 5¼% Secured Serial Gold Bonds of Missouri Pacific Railroad Company.

By the first of the above mentioned opinions (39 F. Supp. 436) a plan of reorganization certified in the Commission's Report and Order of January 10, 1940, and its Supplemental Report and Order of April 9, 1940, was approved by this Court. Appeals were thereafter taken to the 8th Circuit Court of Appeals, but pending appeal the 1940 Plan was submitted to vote of creditors, which resulted in its rejection by five junior and senior classes of

creditors. No appellate ruling was thereafter had on the merits, but, due to certain Supreme Court decisions, the appeals were remanded May 3, 1943. Further objections were filed and heard, and this Court then referred the matter to the Commission (50 F. Supp. 936) to allow its further consideration of the questions whether the Plan gave senior creditors complete compensation for their loss of seniority and whether, in view of changed conditions since that Plan's formulation, any alterations should be made. The Commission held hearings and ultimately approved, with slight modifications, a plan known as "the compromise plan." This compromise plan was jointly proposed to the Commission by the Protective Committee for the First and Refunding Mortgage 5% Bonds of the Missouri Pacific; the Committee for the N. O. T. & M. First Mortgage and Income Bonds; the Protective Committee for the Missouri Pacific General Mortgage 4% Bonds; the Missouri Pacific Railroad Company, Debtor; and the Alleghany Corporation, owning approximately one-fourth of the Missouri Pacific Convertible Bonds, some preferred stock and a large portion of the common stock. The Commission's Report further recites that the Plan also had the agreement of a bank syndicate holding a collateral security claim against the Missouri Pacific, and was generally supported by various other interests.

The plan approved by the Commission in its Order of October 9th, 1944, is essentially the "compromise plan," with certain alterations, and is still substantially the plan previously approved by this Court in 1941. The Commission has summarized its major modifications of the "compromise plan" as follows:

> "(a) The effective date is changed from January 1, 1940, to January 1, 1943, with provisions for change to a later date or dates under certain conditions.
>
> (b) There is distributed among senior classes of creditors the sum of $30,574,095 of cash, the greater part of which is allotted in compromise settlements of parts of their claims for accrued and unpaid interest. Optional offers of additional reorganization

securities are provided for senior creditors not accepting the compromise cash offers.

(c) The parts of the claims of Reconstruction Finance Corporation and of J. P. Morgan and affiliated banks representing interest accrued and unpaid on their claims since the date of the filing by the debtors of their petitions in bankruptcy are settled with cash on a basis of a 4 percent per annum interest rate instead of 3½ percent as provided in the "compromise plan." The other compromise cash offers of the "compromise plan" are not changed.

(d) Provision is made for the distribution of cash among creditors prior to consummation of the plan.

(e) Warrants entitling the holders thereof, for a period of 10 years after consummation of the plan, to purchase new class-B no-par common stock at a price of $100 per share, are offered junior creditors (and stockholders of the New Orleans, Texas & Mexico Railway Company) in addition to the reorganization securities to which such creditors and stockholders are entitled under the plan. Provisions of the compromise plan for issue of warrants to Missouri Pacific Railroad Company preferred and common stockholders are not approved.

(f) The duration of the voting trust is decreased from 10 years, as in the Commission and compromise plans, to 5 years and the method of selection of the voting trustees in such plans is changed to provide that the court shall designate them.

(g) There are various other minor changes from the former Commission's and the compromise plans.

(h) The provisions of both plans for selection of the five reorganization managers, and the first board of directors of the reorganized company are changed."

The Commission Report contains the following comparative tables, which further amplify the alterations it has made:

Capitalization

	Plan as Modified	Former Commission Plan
Fixed-interest debt		
Equip. obligations, undisturbed	$ 15,783,000	$ 15,783,000 (2)
Plaza-Ol. Bldg. 1st-mtg. bonds	591,000	591,000 (2)
10-yr. collateral 2½% notes	10,353,000	14,433,500
First-mtg. bonds	166,900,000	158,780,500
Total	193,597,000	189,490,000
Contingent-interest debt		
General mortgage bonds	159,175,000	120,651,000
Total Debt	352,682,000	310,141,000
Stock		
Preferred stock	57,717,000	115,581,000
Common stock	150,681,000	136,756,400
Total stock	207,798,000	252,337,400
Total capitalization	560,480,000 (1)	562,396,400

(1) Plus such amount of common stock as may be allotted in satisfaction of general unsecured claims. In addition there will be issued warrants, exercisable for 10 years, for purchase of 494,699 shares of class-B no-par common stock at a price of $100 per share, plus such additional warrants as may be issued to holders of general unsecured claims.

(2) For purposes of comparison, amounts shown are those outstanding as of January 1, 1945, the effective date of the plan as modified, instead of January 1, 1940, the effective date of the plan approved in 1940. The difference is an increase of about $2,000,000.

Annual Charges

	Plan as Modified	Former Commission Plan
Fixed interest	$ 7,289,735	$ 7,136,137
Contingent Charges		
Capital expend. fund	none (due to sufficiency of depreciation charges)	580,000 (excess over rate provided by modified plan)
First-Mtg. Sink. Fund	417,023	None
Contingent interest	7,267,202	5,327,940
Contingent sinking fund	796,876	603,305
Total contingent chgs.	8,580,101	6,511,245
Total fixed and contingent charges	15,869,836	13,697,382
Dividends on preferred stock	2,885,241	5,775,050
Total annual charges prior to common stock dividends	18,755,077	19,472,432

In view of the present plan's similarity to the former Commission plan and the above summarization of new features, the Court does not deem it necessary to detail all its many provisions. Attached to the Commission's Supplemental Report as appendix "F" is a table showing the distribution of reorganization securities and cash, and it is hereby made a part of this opinion in further amplification. Disputed provisions of the Plan will appear in the following consideration of the various objections.

Objections of Missouri Pacific & Stockholders

Although separate objection have been filed by the Debtor, Missouri Pacific Railroad Company, and the Protective Committees for the common and preferred stock of that railroad, essentially all three object to the Plan on the same grounds and are, therefore, considered together. Their basis of argument, which constitutes their only objection necessitating comment, arises from the Commission's finding that the stockholders have no equity and consequently must be excluded from participation. They argue, however, in the alternative, saying that the Commission erred either in not allocating them certain warrants or in not allowing a greater permissible capitalization permitting them some participation. The "compromise plan" as originally presented allocated Missouri Pacific stockholders 10-year warrants for the purchase at $100 a share of certain shares of Class "B" no-par common stock, but the Commission rejected this allocation.

The Court's attention is called to the fact that in previously referring this matter back to the Commission one of its stated reasons was to give an opportunity for reconsideration as to whether the valuations of the Debtor's properties should not be revised in view of recent earnings and possible enhanced value of the Road. At that time this Court had no intention of giving any directions to the Commission and was solely of the opinion that since the matter was to be remanded the question of possible revaluation should be called to its attention. The Commission has given particular and painstaking re-appraisal to valuation and capitalization and, in view of the Supreme Court's ruling that the determination of the Commission

in regard to valuation and new capitalization is conclusive if supported by the evidence and made in accordance with legal standards, this Court is not disposed to go further into the matter. The report of July 4th, 1944, and the findings of the Commission show careful consideration and profound understanding of the problems of railroad capitalization, and the Court is completely satisfied that there has been no departure from legal standards or any disregard of proper evidence. In its brief the Debtor admits that "full opportunity fully availed of" was afforded to present evidence and that "the discussion of that evidence * * * shows that the Commission considered all of it." They object solely because the Commission did not apply proper legal tests. For this assertion the Court can find no support.

Regarding the rejection of the compromise plan's provision for warrants to stockholders, the Commission felt that although warrants were reasonable to junior creditors to give them further opportunity for recoupment, any provision for warrants to the stockholders when their equity was extinguished would result in an increase in allowable capitalization. Further, it felt that, in view of the impossibility of providing substantial satisfaction of junior creditors within proper capitalization, it would be inequitable to offer anything at all to stockholders. The Court is in full accord on this holding since it appears elementary and contrary to equity to give anything to stockholders so long as unsatisfied creditor claims exist. This reasoning is equally valid whether the proceeds of the warrants were to be used for any corporate purpose, as contemplated by the compromise plan, or allocated to retirement of indebtedness as is now proposed by the Debtor. The Commission's view that such warrants are unwise because they might have a material effect upon the control of the new company also appears to be a sound reason for their exclusion.

Objections of Holders of Missouri Pacific 5½% Convertible Bonds

A group of individual owners of 5½%, 20-year, Convertible Bonds, Class "A", of the Missouri Pacific take

exception generally to the treatment accorded them, to the $100 option price for common class "B" stock, to the fact that two directors and one reorganization manager are to be appointed by the Convertible Bondholders' trustee, and to the fact that the plan does not require a greater use of cash to reduce new indebtedness. They also object to the capitalization and to the voting trust, but these objections are considered elsewhere.

In the allocation made them, the Court can see no unfairness or inequity when it is considered that these Convertible Bonds are unsecured debentures and cannot be given the same class of stock as is given to securities prior in rank. They argue for an allotment of stock subject to no other common stock and yet disregard their status as unsecured debentures. Neither can the Court find any support whatever for their charge that the trustee of these bonds is dominated and unable to properly devote itself to the interests of the Convertible Bonds alone. There is no evidence in the record that since its appointment the Commercial National Bank & Trust Company of New York has in any way failed to represent impartially all holders of Convertible Bonds.

In regard to their objection that the Plan should provide further payments in cash to various creditors (and in particular for the River and Gulf Bonds) rather than granting allocations subject to the Court's making prior cash distributions, the Court finds no error in the Commission's action. The Commission desired to fix the capitalization at $560,000,000.00 and insure that amount as the maximum. It recognized that this Court might make cash distributions, but it further recognized that there might be an increase in equipment obligations resulting from future demand, which would result in total capitalization at the same as the maximum fixed by it. The question of whether various securities should be retired for cash is thus left to the Court, and the wisdom of such retirements can now be presented and will be disposed of by the Court at the proper time. The Court believes this provision to be a reasonable one and is not disposed to disturb it.

Finally, as to these Bondholders' objection that the option price of $100 for the new common Class "B" stock

offered them under the Plan is too high, the Court is of the opinion that the Commission acted properly in fixing this value, and that the lower mean average market price between 1929 and 1933 for Debtor's stock (which is urged in support of a lower offering price) has no force. These warrants are to be given to allow some further opportunity for recoupment of investments should favorable conditions occur in the future, and are not, nor need not be, given with an absolute present intrinsic or market value. An allocation of securities of established value and an opportunity for recoupment are not one and the same thing by any means.

John M. Balliet's Objections

John M. Balliet is, he alleges, a large individual holder of Missouri Pacific Convertible, General, and First and Refunding Bonds, and also holds certain I.G.N. Adjustment 6's. His sole objection, in which he does not stand alone, is directed to the voting trust provisions in the Plan. The Plan provides that all preferred and common stock of the reorganized company, whether provided for in the Plan or thereafter issued, is to be deposited in a voting trust, which trust is to continue for 5 years from the date of consummation of the Plan or until available net income shall have been sufficient for a period of 3 consecutive calendar years, commencing not earlier than January 1st next to date of consummation of the Plan, to provide full interest and sinking fund requirements on all outstanding General-Mortgage Bonds, Series "A" and Series "B", plus the sum of $3,600,000 per year, whichever period shall be the shorter. The three voting trustees are to be designated by the Court, and one must be a citizen of Missouri and one a citizen of Texas. Thereafter vacancies will be filled by a majority of the remaining trustees. The compromise plan contained a 10-year voting trust, in which the Court was not given the sole appointive power, but the Commission changed it because it believed that the term should be of the shortest possible duration required to accomplish the purpose of its creation and that all three of the voting trustees should be designated by this Court.

Balliet urges that this trust is not authorized under the statute, that it is an unconstitutional deprivation of property, and that it is not fair and equitable. He points out that the Plan changes his position from that of creditor to owner, and that while he is given stock, or ownership, the principal power of stock is withheld.

That the Commission and this Court are empowered under the Act to provide for a voting trust, as created here, the Court does not doubt for a moment. Although it is true that the voting trust will prevent the stockholders from controlling the railroad by their votes for a period of years, and it is also true that the power to require a voting trust is not expressly granted by Section 77, it appears clear to this Court that those provisions of that law which state that a plan shall include provisions modifying or altering the rights of creditors generally, or any class of them, secured or unsecured, or of stockholders, either through the issuance of new securities of any character, or otherwise, and further stating that the plan shall provide adequate means for its execution, very clearly encompasses the right to create such a trust. The stated purpose of this voting trust is to afford adequate protection for any class or classes of creditors, or stockholders, and to assure a stable, experienced and impartial management while the new company is getting on its feet. All of the powers exercisable in the formulation of a plan are certainly not specifically and expressly set down, but the general powers to provide for the execution of the plan and to alter the rights of stockholders necessarily encompass the power to withhold from stock for a reasonable time the voting privilege where greater protection to the parties concerned is thus afforded and a greater probability of the plan's success is assured. The Commission places many terms and conditions on reorganization securities, and it is difficult for this Court to see what there is unreasonable in attaching a condition to the stock. If objector's rights have not been violated by the entire proceeding, why should one single condition attached to the stock constitute a deprivation of due process?

Objector assumes that he is in the position of one who has been given stock and then had its voting right with-

drawn without just compensation. That is not the case. Actually, as a part of a fair and equitable allocation, he is to be allotted stock with no voting right up to five years. He further assumes that the removal of the voting power from stockholders is inequitable because the management will be persons not selected by the stockholders who may not make wise selections of the directors. He points out that the only qualifications of the trustees is that one be a citizen of Missouri and one of Texas, and from that argues that no assurance is afforded that the directors selected will act in the general interest without allegiance to any particular class of security holders, or will act in any manner other than in the selfish interest of those appointing them. It appears to the Court that objector overlooks the fact that all trustees will be initially selected by this Court. It would appear that there is far less probability of an allegiance-bound board of directors being produced through voting trustees chosen with care by this Court, than were the stockholders themselves allowed at the very inception of the Plan to choose a Board. Therefore, the Court rules the voting trust provision to be constitutional, within the powers conferred by the Act, and fair, equitable and reasonable in all respects.

Objections of Little Rock & Hot Springs Bondholders

The trustee and committee for the Little Rock & Hot Springs Western Railroad Company bonds have filed objections to the treatment afforded them and to the provisions for judicial sale of the properties. After study of the same, the Court is of the opinion that these objections differ in no respect from those previously urged and overruled in 1940, and in view of the fact that these bondholders' position is improved in the new plan, these objections will be overruled for the reasons previously assigned.

Request of N.O.T. & M. 1st Mortgage Trustee

The Irving Trust Company, Trustee under the NOT&M first mortgage, has filed a request for clarification of parts of paragraph A of the Plan relating to cash distributions and a statement of position, from which docu-

ment it appears that it is not now opposing the Plan. Inasmuch as an interpretation of the Plan and not an objection is here involved, the Court is of the opinion that this is not the proper time to dispose of the matter. Under the general power to construe given the Court, the questions raised by the Irving Trust may be considered at a later date.

I. G. N. 1st Mortgage Protective Committee Objections

Concerning the objections, 51 in number, filed by the Protective Committee for the holders of the First Mortgage Bonds of the International-Great Northern, said objections, although too numerous to detail, are principally directed against the capitalization of the new company and the treatment afforded to these bonds. Relative to the treatment of these bondholders, the Court is of the opinion that the allocation made them is in all respects fair and equitable, especially in light of the fact that their position is considerably improved over that afforded them by the Commission plan of 1940. Under the 1940 Plan these bondholders were given 29.5% of their claim in Series "A", General Mortgage, Cumulative Income Bonds of the par value of $11,471,000.00; 18.6% in Series "B", General Mortgage, Convertible Income Bonds in the principal amount of $7,217,000; 11% in Prior Preferred, $100 par value, 5 percent Stock in the principal amount of $4,256,000.00; 14.9% in Second Preferred Stock at a value of $4,779,000.00; and 26% in no Par Value Common Stock to be taken at $100.00 a share, or $10,089,500.00. The new plan makes the following provision of allocation to these bonds:

> "The holders of International first-mortgage bonds of the respective series shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately the following:
>
> | | First-mortgage bonds Series C | General-mortgage bonds Series A | General-mortgage bonds Series B | Preferred stock | Common-stock class A (No. of shares) |
> |---|---|---|---|---|---|
> | Series A | $123 | $542 | $153 | $344 | 5.02 |
> | Series B | 116 | 512 | 145 | 324 | 4.73 |
> | Series C | 116 | 512 | 145 | 324 | 4.73 |

The holders of the said bonds of the respective series shall be entitled at their election to receive, in lieu of the common stock, class A, allocated to them as above set forth, cash per $1000 bonds as follows: Series A $130.49, series B $122.63, and Series C $122.63."

In light of the Court's previous approval of their treatment and the statements made in its 1941 opinion, the Court can see no profit in further discussion of these objections.

On the question of capitalization, these bondholders raise one question different from that already covered by this opinion. They point out that the Interstate Commerce Commission in its findings determined separately the following capitalizations for each of the three main railroads comprising the System; Missouri Pacific $463,000,000.00; N.O.T.&M., $67,000,000.00 and I.G.N., $50,000,000.00. The total of these three capitalizations would be $580,000,000.00, but the Commission set a System capitalization of $560,000,000.00, or $20,000,000.00 less than the aggregate. This, they allege and argue, constitutes a deprivation of $20,000,000.00 of property to the creditors and is in violation of the statute and of the Constitution.

The Commission, however, fully explained this elimination in its report when it said:

"One of the parties to the proceedings contends that the duplications do not affect the value of the properties and that the permissible capitalization for the system should equal the total of the separate capitalizations. If any one of the three operating groups of railroads were to be separately reorganized its ownership of valuable securities of one of the other two groups would be a recognizable asset, the value of the securities so owned being proper to add to the value which its other owned property otherwise would possess. Likewise, any income in the form of return on such securities of the other company so owned by the first group would increase the total income of the first group and its total permissible capitalization should be greater than if it did not own

these securities. However, the total permissible capitalization of the second operating group of railroads whose securities were so owned would not be less by reason of any ownership of its securities by the first group. If, however, title to the entire owned properties of both groups were vested in a third new company, the securities of either of the former separate groups if transferred to the new company would represent no value to the new company additional to that which it would already possess by reason of the transfer to it of the titles to all of the other properties of the two groups. In the hands of the new company the securities of one of the former groups held by the other would be cancelled. They would add nothing to the earnings of the third new company and would constitute no basis for permitting a higher capitalization of the new company than should be allowed if such securities had not been transferred to it." (emphasis the Court's)

Certainly in an ordinary merger inter-company holdings would, under proper accounting procedure, result in cancellations, and this Court can see no material difference arising from the fact that capitalization is the question here. Capitalization is based on value, and where the inter-company holdings represent no value or asset on consolidation, their elimination from capitalization follows as a matter of course. The Court rules, therefore, that in law the Commission was correct on this point.

Comstock Objections

The most strongly urged objections are those filed by one Andrew W. Comstock, who alleges that he is the holder of $80,000 of 5¼% Secured Serial Gold Bonds of the Missouri Pacific and that he files these objections on behalf of himself, of 14 owners of at least $90,000.00 additional of said bonds, and of all other owners and holders of said bonds. His objections are joined in and adopted by the Committee for the 5¼% Secured Bonds.

Comstock objects to the participation of the Alleghany Corporation in the reorganization on the ground that he

charges the Alleghany Corporation for its benefit improperly utilized the Debtor Missouri Pacific contrary to the interests of said Debtor. This contention, contained in Comstock's objections 20 to 23, inclusive, cannot be decided at this time because the Court has ordered a separate hearing on the alleged facts and the permissibility of Alleghany's participation. That, however, will not delay a decision on the plan as a whole since the Commission has made provision in the Plan for the eventuality that Comstock might be upheld in excluding or subordinating Alleghany. The Commission said in its Report:

> "If, however, the court shall rule that Alleghany Corporation is not entitled to participate in this reorganization, we conclude and find that any new class B common stock and warrants to subscribe to such stock, which, by the allocations of new securities approved herein, would be distributed to Alleghany Corporation, should not be allotted to that corporation but should be redistributed so as to increase the allotments of class B common stock, and warrants receivable by the other unsecured creditors of the Missouri Pacific group, and by holders of its serial 5¼ per cent bonds, the increase in each case to be in the same proportion as that which the amount of such stock and warrants otherwise receivable by each such other unsecured creditor and each serial bondholder bears to the total amount of such class B common stock and warrants authorized herein to be issued to all such other Missouri Pacific unsecured creditors and the serial bondholders."

Therefore, no disposition will be made of these objections here.

Comstock alleges and argues that the Interstate Commerce Commission failed to exercise its independent judgment in the promulgation of the present plan, was unduly influenced by the fact that it was initiated and presented as a compromise plan, and was influenced to adopt, without consideration, a deal made by private negotiators, i.e., the proponents of the plan. He, therefore, urges that the Plan must be disapproved because of an alleged failure on the part of the Commission to fulfill its statutory

duties independent of agreement. For this allegation the Court finds no basis. Although a compromise plan was presented, it must be noted that plan embodied most of the provisions that the Commission in its 1940 plan had already shown that it considered essential and unopen to alteration. Further, the compromise plan was not accepted by the Commission *en toto*, but several very material alterations were insisted upon by the Commission. The record sent up to this court from the Commission is loaded with examples of the Commission's painstaking consideration of all of the suggested provisions of the compromise plan, its findings and conclusions on each provision, its alterations of certain of those provisions, and its careful discharge of its statutory duty. This court does not believe that the mere existence and recognition of a compromise plan presented by important parties in interest is any evidence at all of a failure of the Commission to perform its function. In view of the extremely complicated and contentious nature of a railroad reorganization proceeding, and its tendency to drag on over the years, compromise plans are to be favored rather than criticised, when they tend to expedite reorganizations and allow greater participation by those not so securely situated.

Comstock next makes the point that the alternative offer of cash or securities to certain senior creditors is not feasible and will result in a higher capitalization than the Commission has held permissible. Stated as simply as possible, the Commission has held that the new company should be capitalized at not more than $560,000,000. It has further provided in its plan (which was suggested by the compromise plan) that certain senior security holders be given an option to take either securities or cash in lieu of securities (the cash offer representing a considerable reduction of claim). The Commission felt, and correctly so, that allocations of securities to full value of claims made the treatment of senior securities fair and equitable, and that the optional cash offer, which could be electively taken, although representing a reduction in total claims, was valid in light of the alternative provisions. It should be carefully noted that in this alternative cash offer lay the very heart of the compromise in the Plan, as it was the

scaling down of senior claims by the alternative cash offers that produced greater participation for junior interests.

In order to carry out these provisions the Plan provides that available cash be used for paying security holders these cash options, or be used to purchase the new company's securities necessary to make the allocations if they elected instead to take securities. The securities to be allocated under the optional offers are all either general mortgage bonds, Series "B", or common stock, Class "A", and as to all or any of the senior security holders given an option and not electing to take cash, these Bonds and Stocks would be provided by purchases from allocations already made to others. No original issuance of these securities to meet contingent allocations will be made. The Plan provides specifically the method for putting these provisions into effect:

> "Creditors who are entitled to an election to receive securities of one class in lieu of securities of another class or cash in lieu of securities, shall make such election within such time (not earlier than the date upon which the plan is confirmed), and in such manner as the reorganization managers, subject to the approval of the court, shall determine.
>
> After confirmation of the plan, the trustee of the estates of the debtors shall upon request of the reorganization managers pay to them a sum in cash equal to the difference between (a) the maximum amount which would be payable to creditors under the alternative offers of cash or securities herein provided for and (b) the amount of cash theretofore distributed to such creditors which is to be credited against cash payable under the plan pursuant to Section A hereof. Said funds, together with any cash refunded to the reorganization managers by creditors who shall elect to take the alternative offer of securities, shall be deposited in a separate account to the credit of the reorganization managers and shall be used by them solely for the following purposes:
>
> (1) On consummation of the plan to pay to

creditors who, under the alternative offer of cash or securities, shall have elected to receive cash, the amounts to which such creditors, respectively, are entitled, as set forth in this section T, and

(2) To acquire in the open market or at private sale, including purchases on a 'when issued' basis, a principal amount of general-mortgage bonds, series B, and a number of shares of common stock which shall not exceed the principal amount of general-mortgage bonds, series B, and the number of shares of common stock which are to be issued to creditors pursuant to their election to take such bonds and stock in lieu of cash."

Comstock argues that should these security holders elect to take securities, the capitalization of the new company would exceed $560,000,000, for the reason that that total capitalization can only be maintained where not a single security is issued the option holders or where securities can be purchased at the cash offer price. In other words, he argues that where a security holder elects to take security in lieu of cash, the reorganization managers are bound to purchase him a security in the market at the cash option price or issue additional securities.

After consideration, the Court has come to the conclusion that these arguments are not a valid attack on the Plan for two reasons. First, the Court is of the opinion that the possibility of the reorganization managers being able to buy securities at the option price is not as improbable as Comstock assumes. When he argues that the mere presence of the reorganization managers in the market will drive up the price, he overlooks the fact that the managers will not be pressed for time and can buy when the conditions are favorable. Further, he brushes aside the commitments made by parties in interest to sell to the managers sufficient of the required general-mortgage bonds at the option price to meet any elections. The Court has no fear that those commitments will fail to be forthcoming when the need arises. He further assumes a

far higher market price for the Class "A" stock than seems probable to this court, in view of the prospective decreased earnings in the post-war period.

Second, the Commission's Report itself shows that the possibility of such an increased issuance of securities was inherent in the Plan and recognized by it, and that provision was made for such an eventuality. The Commission's anticipation of this is found in the provision that the reorganization managers fix the number of shares of each class to be authorized and to be originally issued. Comstock erroneously assumes, however, that if a greater number of shares are issued the capitalization would thereby be increased. His error lies in his failure to recognize that all computations as to this no-par value common stock are based on a purely assigned value of $100.00 per share and that, therefore, any further issue of such stock would not actually increase the total capitalization one whit. Further, any increased issue of common stock would not affect the compensation of those receiving common stock, as Comstock urges, because the Commission's finding of full compensation was definitely made in the light of their recognition of the possibility that a greater number of shares might be issued. Comstock further overlooks the fact that if the allotted cash cannot buy the required securities on the market, that it can then under supervision of this Court be applied to retirement of other debt, which will obviously work to keep down total capitalization.

The Court is quite favorably impressed with the entire scheme embodied in this alternative cash offer device and rather than disapproving it, as Comstock urges, is inclined toward it most favorably for the beneficial result it has had upon the treatment of junior interests. The Court notes with interest the fact that Comstock's voice among the many interested paries is now alone raised in opposition to this provision.

Comstock next attacks the provisions of the Plan which provide for the methods of designating voting trustees, directors and reorganization managers. He alleges that

the method selected by the Commission, whereby the five reorganization managers are designated by representatives of major issues of securities, and a panel of directors is to be designated by similar groups (subject to ultimate selection by the voting trustees), is a delegation of control of the reorganized company to a small group not representative of the security-holders. He urges that the Plan should be altered to provide for the selection of directors and managers by direct vote of the security-holders themselves. The Court is not disposed to sustain this, for the reason that similar provisions for the selection of such officers have met the universal approval of the Commission and U. S. District Courts in other reorganizations. So far as this Court can determine, it has always been customary to authorize designations by responsible representatives of major issues. Further, under this Plan the voting trustees are to be selected by the Court itself and actions of the reorganization managers are to be subject to its approval. The Court believes that following this customary reorganization procedure and delegating authority to representatives who have regularly acted is in all respects warranted, and gives no basis for a fear of dominance by an entrenched group.

The Plan provides that the new first mortgage shall contain a provision which shall permit the new company, with the consent of holders of two-thirds, and in some cases three-fourths, of the new first mortgage bonds, to make various amendments and alterations to said mortgage. It further provides that the new general mortgage shall contain provisions permitting certain amendments to it. Comstock attacks these provisions, referring to them as "escape clauses", on the grounds that they constitute an attempt to circumvent the bankruptcy law by permitting future reorganizations out of court, and that they are contrary to public policy. He points out, apprehensively, the many changes that could be made in the Plan at a later date by the use of these "escape clauses". The Court, however, is not impressed by this objection and is of the opinion that these provisions are sound and wise. They are democratic in nature, allowing for voluntary alterations in the mortgages, as need arises, and

provide a far less expensive and formal procedure than court action. Surely a provision that in a fair way prevents full-dress bankruptcy proceedings is desirable, rather than vicious as Comstock urges. There is nothing in the statute which prohibits such a device, and the Court is aware that not only have such clauses been approved in other reorganization proceedings but that they are very common today in non-reorganization indentures.

Finally, there is the so-called Comstock Objection No. 19, which was the subject of a separate hearing and upon which extensive evidence was presented. Objection No. 19 reads:

> "19. The Plan is unfair and inequitable by reason of the fact that it 'assumed' the validity of an alleged claim of MOP against NOTM for inter-company advances. The allocation of securities to the said 5-¼% Secured Bonds is expressly stated by the Commission to be based on the assumption of the validity of said claim. Any allocation of securities based on the validity of said claim is unfair and inequitable. The National Bankruptcy Act, as amended, requires a full judicial determination on the merits of the validity of said claim. There has been no such determination. The claim is invalid in all respects. It is based on advances purportedly made by MOP to a dominated subsidiary NOTM. Said advances were made in the interests of MOP and not of NOTM. They would not have been made if NOTM had had the benefit of independent management. Detailed objections to the claim of MOP against NOTM are contained in Schedule A annexed hereto and made a part hereof."

Briefly, the Comstock contention amounts to this: that the Missouri Pacific claim against the NOT&M is invalid and, if invalidated, the NOT&M stock, which secures the 5-¼% Bonds, would have a value greater than that assigned it by the Commission, which increased value should result in a more favorable treatment of these bonds.

The evidence presented at the hearing of this objection was voluminous and complicated, and cannot be here

detailed without unduly prolonging this opinion. The Court has, however, carefully considered the entire record and is of the opinion that, everything considered, the evidence before it does not sustain Comstock's contentions of any [improperiety] on the part of officers and directors or of the invalidity of the inter-company claim. Railroad finance is, of necessity, of a most intricate nature, and after the passage of twenty years, and the death of most participants, doubt can be cast upon almost any financial transaction. This situation, however, does not amount to a positive showing of impropriety, but rather arises from the extremely intricate nature of the subject matter, which lends itself to strained interpretations when time has blurred the true picture.

Comstock's contentions of the milking of the NOT&M by Missouri Pacific cannot be reconciled with the great benefits conferred upon the Gulf Coast Lines by the Baldwin improvement program. It is not this Court's experience that a parent corporation, when engaged in the type of improper conduct alleged here, pours millions of dollars into the subsidiary to build it up to a position of strength far in excess of that at the date of acquisition. Further, the Court is impressed by the fact that almost all of the transactions of which Comstock complains were entered into only after notice to, and with the approval of, the Interstate Commerce Commission. No substantiation appears for Comstock's innuendo that the Commission was somehow derelict in its duty, or allowed itself to be hoodwinked.

The objector Comstock purchased the securities which gives him entree to this proceeding as a speculation in the latter part of 1942 and in the early part of 1943, and he did not become a party until September 30th, 1943. No facts have been shown that have not been available to all for many years; and Comstock's being a newcomer does not relieve him from the defense of laches. The bonds that he holds are subject to all of the infirmities which existed at the time he bought them. Looking to the entire record, and the dates upon which the information presented became available, the Court is brought to the

conclusion that the contention urged, even were it possible to substantiate it, is stale beyond recall, and that there has been inexcusable delay in its presentation. This Court has confidence in its Trustee, and believes that he has fully performed his duties in relation to this intercompany claim. Time and again opportunity has been presented to various persons to come forward but with no result. Comstock cannot contend he is in the position of a person from whom the facts have been concealed. Rather, he has taken facts apparent to all and only at the twelfth hour has come forward.

Finally, the Court would like to note that the entire attempt by Comstock to disprove the validity of the intercompany claim is not an attack upon those whom he alleges perpetrated a wrong, but, rather, is an attempt to hold other creditors of the railroad responsible for the alleged actions of others. This feature, it appears to the Court, constitutes a basic difference between the alleged situation in this case and the so-called "Deep Rock" case, Taylor vs. Standard Gas & Electric Co., 306 U. S. 307, so heavily relied upon by Comstock. The other creditors whom Comstock's position would injure are certainly as innocent as he of any alleged malfeasance and those whom he attacks are no longer held to be in interest.

Therefore, the entire record considered, the Court is of the opinion that Objection No. 19 and related objections of Andrew W. Comstock to the Plan of Reorganization, and his objection to the claim of the Missouri Pacific against the NOT&M, should be overruled.

Having considered and disposed of all objections, the Court will next address itself to the criteria about which Section 77 (e) of the Act (11 U. S. C. 205) requires that the Judge satisfy himself, regardless of objections. The Court is of the opinion that the requirements of subsections 2 and 3 of said section are adequately provided for in the Plan by Paragraph T thereof, and since hearings on expenses and fees incident to the reorganization have already been held within maximum limits fixed by the Commission no omission is found there. As for the

provisions of sub-paragraph 1, requiring that the court be satisfied that the Plan "complies with the provisions of sub-section B of Section 77, is fair and equitable, etc.", the very general accord now afforded the Plan is naturally influential in its favor. As a whole, the Court is of the opinion that the Plan meets all of the requirements of the Act. We are, of course, familiar with the prior approved plan, and have carefully studied all recent alterations as well as the actions taken by the Commission in regard to this Court's suggestions in its second opinion. The Court believes that the Commission has fully complied with the requirements of law and given satisfactory further consideration, and that the Plan now presented is in all respects just and satisfactory and holds forth high prospect for a soundly reorganized Missouri Pacific System.

The formulation of a workable reorganization for this huge system has been a long and difficult task, but the Court now believes that, with the approval of the present Plan, the end of the matter is in sight. Although, as the Commission has said, no plan can be drawn which will receive the unanimous approval of everyone, it appears to the Court that the present Plan achieves as near perfection as human fallibility can attain.

Therefore, all objections and claims for equitable treatment are hereby overruled and an order will be entered approving that Plan of Reorganization contained in the Third Supplemental Order of the Interstate Commerce Commission. Counsel is directed to submit draft of order on notice for approval and signature.

GEO. H. MOORE,
United States District Judge.

Dated this 21st day of
December, 1945.

(Appendix F attached to the foregoing Opinion omitted at this place in the printed record to avoid duplication inasmuch as the same hereafter appears following the Opinion as Amended.)

(Order of District Court amending opinion filed December 21, 1945.)

(Filed December 28, 1945)

(Order No. 2866-A)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

It Is Ordered By The Court, of its own motion, that the opinion of this Court approving the proposed Plan of Reorganization in the above styled matter, heretofore filed herein on the 21st day of December, 1945, be and the same is hereby amended by striking the entire last paragraph of said Opinion (being page 23023 of the printed record of this proceeding) and inserting in lieu thereof a substitute final paragraph which is in words as follows, to-wit:

"Therefore, there will be entered a separate order overruling Objection No. 19 of Andrew W. Comstock, in accordance with the prior order of this Court as to said Objection, and there will be entered an order overruling all other Objections and Claims for equitable treatment and approving that Plan of Reorganization contained in the Third Supplemental Order of the Interstate Commerce Commission. Counsel is directed to submit draft of said orders on notice for approval and signature."

It Is Further Ordered By The Court that the Clerk of this Court be and he is hereby directed to physically amend the original filed opinion herein in conformity with this Order.

Dated this 28th day of December, 1945.

GEO. H. MOORE,
United States District Judge.

(Order of District Court further amending opinion filed December 21, 1945.)

(Filed January 7, 1946.)

(Order No. 2866-B.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

It Is Ordered by the Court, of its own motion, that the typewritten opinion of this Court approving the proposed Plan of Reorganization in the above styled matter, heretofore filed herein on the 21st day of December, 1945, and as amended on the 28th day of December, 1945, be and the same is hereby further amended by striking the sentence appearing on page 18 and beginning in line 5 of said page (page 23013, line 29 of the printed record of this proceeding), which reads:

> "No original issuance of these securities to meet contingent allocations will be made."

and inserting in lieu thereof a new sentence to read as follows:

> "No original issuance of these securities to meet contingent allocations is contemplated, and although such issuance is recognized as possible it is not considered probable."

and by further striking the sentences on page 19 and beginning in lines 19 and 22, respectively (page 23015, lines 22 and 26, respectively, of the printed record of this proceeding), which read:

> "Further, he brushes aside the commitments made

by parties in interest to sell to the managers sufficient of the required general-mortgage bonds at the option price to meet any elections. The Court has no fear that those commitments will fail to be forthcoming when the need arises."

and by inserting in lieu thereof two new sentences to read as follows:

"Further, he brushes aside the assurances given by certain representatives of large holders of securities which will be exchangeable under the Plan for general-mortgage bonds, Series B, that these representatives would not, subject to the approval at the time of their directors, permit the development of a corner but would recommend to their respective boards of directors that sufficient of these bonds be placed upon the market within the required price limit to meet any need of the reorganization managers. Although the Court realizes that these assurances are in no way legally binding agreements, still the Court has no fear that these parties will fail to assist the reorganization managers in this regard."

It Is Further Ordered by the Court that the Clerk of this Court be and he is hereby directed to physically amend the original filed opinion herein in conformity with this Order.

Dated this 7th day of January, 1946.

GEO. H. MOORE,
United States District Judge.

(Opinion of District Court on Approval of Plan of Reorganization as Amended by Orders Nos. 2866-A and 2866-B.)

(Filed December 21, 1945.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of

Missouri Pacific Railroad Company, Debtor.

In Proceedings for the Reorganization of a Railroad. No. 6935.

The matter of the approval of a plan of reorganization for the principal debtors, the Missouri Pacific Railroad Company, the New Orleans, Texas & Mexico Railway Company and the International-Great Northern Railroad Company, and their various subsidiary companies (except the Missouri-Illinois Railroad Company) has been the subject of two prior opinions of this Court. See "In the Matter of Missouri Pacific Railroad Company," 39 F. Supp. 436 and 50 F. Supp. 936. Since the date of the last opinion by this Court in July of 1943 this matter has been back to the Interstate Commerce Commission for further consideration, and after hearings the Commission has forwarded its Supplemental Report and Order of July 4th, 1944, and its Third Supplemental Report and Order of October 9th, 1944, containing a revised plan of reorganization. Subsequently, pursuant to direction of this Court, all parties in interest have been given the opportunity to file objections, and the following have availed themselves thereof:

(1) Missouri Pacific Railroad Company, Debtor;

(2) Protective Committee for holders of Common Stock of Missouri Pacific Railroad Company;

(3) Protective Committee for Missouri Pacific Preferred Stockholders;

(4) Group of individual owners and holders of 5½%, twenty-year Convertible Bonds, Class "A," of Missouri Pacific Railroad Company;

(5) John M. Balliet, as holder of Missouri Pacific 5½% Convertible Bonds and other securities;

(6) St. Louis Union Trust Company, Trustee for, and Roland C. Behrens, et al. as Committee for holders of Little Rock & Hot Springs Western Railroad Company First Mortgage 4% Gold Bonds;

(7) Irving Trust Company, Trustee under the N. O. T. & M. Mortgage;

(8) Protective Committee for the holders of First Mortgage Bonds of International-Great Northern Railroad Company, a debtor herein;

(9) Missouri Pacific Railroad Company 5¼% Serial Bondholders' Committee; and

(10) Andrew W. Comstock, holder of 5¼% Secured Serial Gold Bonds of Missouri Pacific Railroad Company.

By the first of the above mentioned opinions (39 F. Supp. 436) a plan of reorganization certified in the Commission's Report and Order of January 10, 1940, and its Supplemental Report and Order of April 9, 1940, was approved by this Court. Appeals were thereafter taken to the 8th Circuit Court of Appeals, but pending appeal the 1940 Plan was submitted to vote of creditors, which resulted in its rejection by five junior and senior classes of creditors. No appellate ruling was thereafter had on the merits, but, due to certain Supreme Court decisions, the appeals were remanded May 8, 1943. Further objections were filed and heard, and this Court then referred the matter to the Commission (50 F. Supp. 936) to allow its further consideration of the questions whether the Plan gave senior creditors complete compensation for their loss of seniority and whether, in view of changed conditions since that Plan's formulation, any alterations should be made. The Commission held hearings and ultimately approved, with slight modifications, a plan known as "the compromise plan." This compromise plan was jointly proposed to the Commission by the Protective Committee for the First and Refunding Mortgage 5% Bonds of the Missouri Pacific; the Committee for the N. O. T. & M. First Mortgage and Income Bonds; the Protective Com-

mittee for the Missouri Pacific General Mortgage 4% Bonds; the Missouri Pacific Railroad Company, Debtor; and the Alleghany Corporation, owning approximately one-fourth of the Missouri Pacific Convertible Bonds, some preferred stock and a large portion of the common stock. The Commission's Report further recites that the Plan also had the agreement of a bank syndicate holding a collateral security claim against the Missouri Pacific, and was generally supported by various other interests.

The plan approved by the Commission in its Order of October 9th, 1944, is essentially the "compromise plan," with certain alterations, and is still substantially the plan previously approved by this Court in 1941. The Commission has summarized its major modifications of the "compromise plan" as follows:

"(a) The effective date is changed from January 1, 1940, to January 1, 1943, with provisions for change to a later date or dates under certain conditions.

(b) There is distributed among senior classes of creditors the sum of $30,574,095 of cash, the greater part of which is allotted in compromise settlements of parts of their claims for accrued and unpaid interest. Optional offers of additional reorganization securities are provided for senior creditors not accepting the compromise cash offers.

(c) The parts of the claims of Reconstruction Finance Corporation and of J. P. Morgan and affiliated banks representing interest accrued and unpaid on their claims since the date of the filing by the debtors of their petitions in bankruptcy are settled with cash on a basis of a 4 percent per annum interest rate instead of 3½ percent as provided in the 'compromise plan.' The other compromise cash offers of the 'compromise plan' are not changed.

(d) Provision is made for the distribution of cash among creditors prior to consummation of the plan.

(e) Warrants entitling the holders thereof, for a period of 10 years after consummation of the plan, to purchase new class-B no-par common stock at a price of $100 per share, are offered junior creditors

(and stockholders of the New Orleans, Texas & Mexico Railway Company) in addition to the reorganization securities to which such creditors and stockholders are entitled under the plan. Provisions of the compromise plan for issue of warrants to Missouri Pacific Railroad Company preferred and common stockholders are not approved.

(f) The duration of the voting trust is decreased from 10 years, as in the Commission and compromise plans, to 5 years and the method of selection of the voting trustees in such plans is changed to provide that the court shall designate them.

(g) There are various other minor changes from the former Commission's and the compromise plans.

(h) The provisions of both plans for selection of the five reorganization managers, and the first board of directors of the reorganized company are changed."

The Commission Report contains the following comparative tables, which further amplify the alterations it has made:

Capitalization

	Plan as Modified	Former Commission Plan
Fixed-interest debt		
Equip. obligations, undisturbed	$ 15,755,000	$ 15,755,000 (2)
Plaza-Ol. Bldg. 1st-mtg. bonds	591,000	591,000 (2)
10-yr. collateral 3½% notes	10,352,000	14,432,500
First-mtg. bonds	166,809,000	158,700,500
Total	193,507,000	189,480,000
Contingent-interest debt		
General mortgage bonds	159,175,000	120,661,000
Total Debt	352,682,000	310,141,000
Stock		
Preferred stock	57,717,000	115,501,000
Common stock	150,081,000	136,756,400
Total stock	207,798,000	252,257,400
Total capitalization	560,480,000 (1)	562,398,400

(1) Plus such amount of common stock as may be allotted in satisfaction of general unsecured claims. In addition there will be issued warrants, exercisable for 10 years, for purchase of 494,699 shares of class-B no-par common stock at a price of $100 per share, plus such additional warrants as may be issued to holders of general unsecured claims.

(2) For purposes of comparison, amounts shown are those outstanding as of January 1, 1943, the effective date of the plan as modified, instead of January 1, 1940, the effective date of the plan approved in 1940. The difference is an increase of about $2,000,000.

Annual Charges

	Plan as Modified	Former Commission Plan
Fixed interest	$ 7,239,735	$ 7,138,117
Contingent Charges		
Capital expend. fund	none (due to sufficiency of depreciation charges)	$60,000 (excess over rate provided by modified plan)
First Mtg. Sink. Fund	417,023	None
Contingent interest	7,267,302	5,237,940
Contingent sinking fund	705,076	903,306
Total contingent chgs.	8,589,101	6,511,245
Total fixed and contingent charges	15,969,231	13,697,362
Dividends on preferred stock	2,885,241	5,775,050
Total annual charges prior to common stock dividends	18,755,677	19,472,422

In view of the present plan's similarity to the former Commission plan and the above summarization of new features, the Court does not deem it necessary to detail all its many provisions. Attached to the Commission's Supplemental Report as appendix "F" is a table showing the distribution of reorganization securities and cash, and it is hereby made a part of this opinion in further amplification. Disputed provisions of the Plan will appear in the following consideration of the various objections.

Objections of Missouri Pacific & Stockholders.

Although separate objections have been filed by the Debtor, Missouri Pacific Railroad Company, and the Protective Committees for the common and preferred stock of that railroad, essentially all three object to the Plan on the same grounds and are, therefore, considered together. Their basis of argument, which constitutes their only objection necessitating comment, arises from the Commission's finding that the stockholders have no equity and consequently must be excluded from participation. They argue, however, in the alternative, saying that the Commission erred either in not allocating them certain warrants or in not allowing a greater permissible capitalization permitting them some participation. The "compromise plan" as originally presented allocated Missouri Pacific

stockholders 10-year warrants for the purchase at $100 a share of certain shares of Class "B" no-par common stock, but the Commission rejected this allocation.

The Court's attention is called to the fact that in previously referring this matter back to the Commission one of its stated reasons was to give an opportunity for reconsideration as to whether the valuations of the Debtor's properties should not be revised in view of recent earnings and possible enhanced value of the Road. At that time this Court had no intention of giving any directions to the Commission and was solely of the opinion that since the matter was to be remanded the question of possible revaluation should be called to its attention. The Commission has given particular and painstaking reappraisal to valuation and capitalization and, in view of the Supreme Court's ruling that the determination of the Commission in regard to revaluation and new capitalization is conclusive if supported by the evidence and made in accordance with legal standards, this Court is not disposed to go further into the matter. The report of July 4th, 1944, and the findings of the Commission show careful consideration and profound understanding of the problems of railroad capitalization, and the Court is completely satisfied that there has been no departure from legal standards or any disregard of proper evidence. In its brief the Debtor admits that "full opportunity fully availed of" was afforded to present evidence and that "the discussion of that evidence * * * shows that the Commission considered all of it". They object solely because the Commission did not apply proper legal tests. For this assertion the Court can find no support.

Regarding the rejection of the compromise plan's provision for warrants to stockholders, the Commission felt that although warrants were reasonable to junior creditors to give them further opportunity for recoupment, any provision for warrants to the stockholders when their equity was extinguished would result in an increase in allowable capitalization. Further, it felt that, in view of the impossibility of providing substantial satisfaction of junior creditors within proper capitalization, it would be

inequitable to offer anything at all to stockholders. The Court is in full accord on this holding since it appears elementary and contrary to equity to give anything to stockholders so long as unsatisfied creditor claims exist. This reasoning is equally valid whether the proceeds of the warrants were to be used for any corporate purpose, as contemplated by the compromise plan, or allocated to retirement of indebtedness as is now proposed by the Debtor. The Commission's view that such warrants are unwise because they might have a material effect upon the control of the new company also appears to be a sound reason for their exclusion.

Objections of Holders of Missouri Pacific 5½% Convertible Bonds.

A group of individual owners of 5½%, 20-year, Convertible Bonds, Class "A", of the Missouri Pacific take exception generally to the treatment accorded them, to the $100 option price for common class "B" stock, to the fact that two directors and one reorganization manager are to be appointed by the Convertible Bondholders' trustee, and to the fact that the plan does not require a greater use of cash to reduce new indebtedness. They also object to the capitalization and to the voting trust, but these objections are considered elsewhere.

In the allocation made them, the Court can see no unfairness or inequity when it is considered that these Convertible Bonds are unsecured debentures and cannot be given the same class of stock as is given to securities prior in rank. They argue for an allotment of stock subject to no other common stock and yet disregard their status as unsecured debentures. Neither can the Court find any support whatever for their charge that the trustee of these bonds is dominated and unable to properly devote itself to the interests of the Convertible Bonds alone. There is no evidence in the record that since its appointment Commercial National Bank & Trust Company of New York has in any way failed to represent impartially all holders of Convertible Bonds.

In regard to their objection that the Plan should pro-

vide further payments in cash to various creditors (and in particular for the River and Gulf Bonds) rather than granting allocations subject to the Court's making prior cash distributions, the Court finds no error in the Commission's action. The Commission desired to fix the capitalization at $560,000,000.00 and insure that amount as the maximum. It recognized that this Court might make cash distributions, but it further recognized that there might be an increase in equipment obligations resulting from future demand, which would result in total capitalization at the same as the maximum fixed by it. The question of whether various securities should be retired for cash is thus left to the Court, and the wisdom of such retirements can now be presented and will be disposed of by the Court at the proper time. The Court believes this provision to be a reasonable one and is not disposed to disturb it.

Finally, as to these Bondholders' objection that the option price of $100 for the new common Class "B" stock offered them under the Plan is too high, the Court is of the opinion that the Commission acted properly in fixing this value, and that the lower mean average market price between 1929 and 1933 for Debtor's stock (which is urged in support of a lower offering price) has no force. These warrants are to be given to allow some further opportunity for recoupment of investments should favorable conditions occur in the future, and are not, nor need not be, given with an absolute present intrinsic or market value. An allocation of securities of established value and an opportunity for recoupment are not one and the same thing by any means.

John M. Balliet's Objections.

John M. Balliet is, he alleges, a large individual holder of Missouri Pacific Convertible, General, and First and Refunding Bonds, and also holds certain I. G. N. Adjustment 6's. His sole objection, in which he does not stand alone, is directed to the voting trust provisions in the Plan. The Plan provides that all preferred and common stock of the reorganized company, whether provided for

in the Plan or thereafter issued, is to be deposited in a voting trust, which trust is to continue for 5 years from the date of consummation of the Plan or until available net income shall have been sufficient for a period of 3 consecutive calendar years, commencing not earlier than January 1st next to date of consummation of the Plan, to provide full interest and sinking fund requirements on all outstanding General-Mortgage Bonds, Series "A" and Series "B", plus the sum of $3,600,000 per year, whichever period shall be the shorter. The three voting trustees are to be designated by the Court, and one must be a citizen of Missouri and one a citizen of Texas. Thereafter vacancies will be filled by a majority of the remaining trustees. The compromise plan contained a 10-year voting trust, in which the Court was not given the sole appointive power, but the Commission changed it because it believed that the term should be of the shortest possible duration required to accomplish the purpose of its creation and that all three of the voting trustees should be designated by this Court.

Balliet urges that this trust is not authorized under the statute, that it is an unconstitutional deprivation of property, and that it is not fair and equitable. He points out that the Plan changes his position from that of creditor to owner, and that while he is given stock, or ownership, the principal power of stock is withheld.

That the Commission and this Court are empowered under the Act to provide for a voting trust, as created here, the Court does not doubt for a moment. Although it is true that the voting trust will prevent the stockholders from controlling the railroad by their votes for a period of years, and it is also true that the power to require a voting trust is not expressly granted by Section 77, it appears clear to this Court that those provisions of that law which state that a plan shall include provisions modifying or altering the rights of creditors generally, or any class of them, secured or unsecured, or of stockholders, either through the issuance of new securities of any character, or otherwise, and further stating that the plan shall provide adequate means for its execution, very clearly

encompasses the right to create such a trust. The stated purpose of this voting trust is to afford adequate protection for any class or classes of creditors, or stockholders, and to assure a stable, experienced and impartial management while the new company is getting on its feet. All of the powers exercisable in the formulation of a plan are certainly not specifically and expressly set down, but the general powers to provide for the execution of the plan and to alter the rights of stockholders necessarily encompass the power to withhold from stock for a reasonable time the voting privilege where greater protection to the parties concerned is thus afforded and a greater probability of the plan's success is assured. The Commission places many terms and conditions on reorganization securities, and it is difficult for this Court to see what there is unreasonable in attaching a condition to the stock. If objector's rights have not been violated by the entire proceeding, why should one single condition attached to the stock constitute a deprivation of due process?

Objector assumes that he is in the position of one who has been given stock and then had its voting right withdrawn without just compensation. That is not the case. Actually, as a part of a fair and equitable allocation, he is to be allotted stock with no voting right up to five years. He further assumes that the removal of the voting power from stockholders is inequitable because the management will be persons not selected by the stockholders who may not make wise selections of the directors. He points out that the only qualifications of the trustees is that one be a citizen of Missouri and one of Texas, and from that argues that no assurance is afforded that the directors selected will act in the general interest without allegiance to any particular class of security holders, or will act in any manner other than in the selfish interest of those appointing them. It appears to the Court that objector overlooks the fact that all trustees will be initially selected by this Court. It would appear that there is far less probability of an allegiance-bound board of directors being produced through voting trustees chosen with care by this Court, than were the stockholders themselves allowed at the very inception of the Plan to choose a Board. Therefore, the

Court rules the voting trust provision to be constitutional, within the powers conferred by the Act, and fair, equitable and reasonable in all respects.

Objections of Little Rock & Hot Springs Bondholders.

The trustee and committee for the Little Rock & Hot Springs Western Railroad Company bonds have filed objections to the treatment afforded them and to the provisions for judicial sale of the properties. After study of the same, the Court is of the opinion that these objections differ in no respect from those previously urged and overruled in 1940, and in view of the fact that these bondholders' position is improved in the new plan, these objections will be overruled for the reasons previously assigned.

Request of N. O. T. & M. 1st Mortgage Trustee.

The Irving Trust Company, Trustee under the NOT&M first mortgage, has filed a request for clarification of parts of paragraph A of the Plan relating to cash distributions and a statement of position, from which document it appears that it is not now opposing the Plan. Inasmuch as an interpretation of the Plan and not an objection is here involved, the Court is of the opinion that this is not the proper time to dispose of the matter. Under the general power to construe given the Court, the questions raised by the Irving Trust may be considered at a later date.

I. G. N. 1st Mortgage Protective Committee Objections.

Concerning the objections, 51 in number, filed by the Protective Committee for the holders of the First Mortgage Bonds of the International-Great Northern, said objections, although too numerous to detail, are principally directed against the capitalization of the new company and the treatment afforded to these bonds. Relative to the treatment of these bondholders, the Court is of the opinion that the allocation made them is in all respects fair and equitable, especially in light of the fact that their

position is considerably improved over that afforded them by the Commission plan of 1940. Under the 1940 Plan these bondholders were given 29.5% of their claim in Series "A", General Mortgage, Cumulative Income Bonds of the par value of $11,471,000.00; 18.6% in Series "B", General Mortgage, Convertible Income Bonds in the principal amount of $7,217,000; 11% in Prior Preferred, $100 par value, 5 percent Stock in the principal amount of $4,256,000.00; 14.9% in Second Preferred Stock at a value of $4,779,000.00; and 26% in no Par Value Common Stock to be taken at $100.00 a share, or $10,089,500.00. The new plan makes the following provision of allocation to these bonds:

> "The holders of International first-mortgage bonds of the respective series shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately the following:

	First-mortgage bonds Series C	General-mortgage bonds Series A	General-mortgage bonds Series B	Preferred stock	Common stock class A (No. of shares)
Series A	$123	$542	$153	$244	5.03
Series B	116	512	145	231	4.73
Series C	116	512	145	231	4.73

> The holders of the said bonds of the respective series shall be entitled at their election to receive, in lieu of the common stock, class A, allocated to them as above set forth, cash per $1000 bonds as follows: Series A $130.49, series B $122.63, and Series C $122.63."

In light of the Court's previous approval of their treatment and the statements made in its 1941 opinion, the Court can see no profit in further discussion of these objections.

On the question of capitalization, these bondholders raise one question different from that already covered by this opinion. They point out that the Interstate Commerce Commission in its findings determined separately the following capitalizations for each of the three main railroads comprising the System; Missouri Pacific $463,000,000.00; N. O. T. & M., $67,000,000.00 and I. G. N., $50,000,000.00. The total of these three capitalizations would

be $580,000,000.00, but the Commission set a System capitalization of $560,000,000.00, or $20,000,000.00 less than the aggregate. This, they allege and argue, constitutes a deprivation of $20,000,000.00 of property to the creditors and is in violation of the statute and of the Constitution.

The Commission, however, fully explained this elimination in its report when it said:

> "One of the parties to the proceedings contends that the duplications do not affect the value of the properties and that the permissible capitalization for the system should equal the total of the separate capitalizations. If any one of the three operating groups of railroads were to be separately reorganized its ownership of valuable securities of one of the other two groups would be a recognizable asset, the value of the securities so owned being proper to add to the value which its other owned property otherwise would possess. Likewise, any income in the form of return on such securities of the other company so owned by the first group would increase the total income of the first group and its total permissible capitalization should be greater than if it did not own those securities. However, the total permissible capitalization of the second operating group of railroads whose securities were so owned would not be less by reason of any ownership of its securities by the first group. *If, however, title to the entire owned properties of both groups were vested in a third new company, the securities of either of the former separate groups if transferred to the new company would represent no value to the new company additional to that which it would already possess by reason of the transfer to it of the titles to all of the other properties of the two groups. In the hands of the new company the securities of one of the former groups held by the other would be cancelled. They would add nothing to the earnings of the third new company and would constitute no basis for permitting a higher capitalization of the new company than should be allowed if such securities had not been transferred to it.*" (emphasis the Court's)

Certainly in an ordinary merger inter-company holdings would, under proper accounting procedure, result in cancellations, and this Court can see no material difference arising from the fact that capitalization is the question here. Capitalization is based on value, and where the inter-company holdings represent no value or asset on consolidation their elimination from capitalization follows as a matter of course. The Court rules, therefore, that in law the Commission was correct on this point.

Comstock Objections.

The most strongly urged objections are those filed by one Andrew W. Comstock, who alleges that he is the holder of $80,000 of 5¼% Secured Serial Gold Bonds of the Missouri Pacific and that he files these objections on behalf of himself, of 14 owners of at least $90,000.00 additional of said bonds, and of all other owners and holders of said bonds. His objections are joined in and adopted by the Committee for the 5¼% Secured Bonds.

Comstock objects to the participation of the Alleghany Corporation in the reorganization on the ground that he charges the Alleghany Corporation for its benefit improperly utilized the Debtor Missouri Pacific contrary to the interests of said Debtor. This contention, contained in Comstock's objections 20 to 23, inclusive, cannot be decided at this time because the Court has ordered a separate hearing on the alleged facts and the permissibility of Alleghany's participation. That, however, will not delay a decision on the plan as a whole since the Commission has made provision in the Plan for the eventuality that Comstock might be upheld in excluding or subordinating Alleghany. The Commission said in its Report:

> "If, however, the court shall rule that Alleghany Corporation is not entitled to participate in this reorganization, we conclude and find that any new class B common stock and warrants to subscribe to such stock, which, by the allocations of new securities approved herein, would be distributed to Alleghany Corporation, should not be allotted to that corporation but should be redistributed so as to increase the

allotments of class B common stock, and warrants receivable by the other unsecured creditors of the Missouri Pacific group, and by holders of its serial 5¼ per cent bonds, the increase in each case to be in the same proportion as that which the amount of such stock and warrants otherwise receivable by each such other unsecured creditor and each serial bondholder bears to the total amount of such class-B common stock and warrants authorized herein to be issued to all such other Missouri Pacific unsecured creditors and the serial bondholders."

Therefore, no disposition will be made of these objections here.

Comstock alleges and argues that the Interstate Commerce Commission failed to exercise its independent judgment in the promulgation of the present plan, was unduly influenced by the fact that it was initiated and presented as a compromise plan, and was influenced to adopt, without consideration, a deal made by private negotiators, i. e., the proponents of the plan. He, therefore, urges that the Plan must be disapproved because of an alleged failure on the part of the Commission to fulfill its statutory duties independent of agreement. For this allegation the Court finds no basis. Although a compromise plan was presented, it must be noted that plan embodied most of the provisions that the Commission in its 1940 plan had already shown that it considered essential and unopen to alteration. Further, the compromise plan was not accepted by the Commission *en toto,* but several very material alterations were insisted upon by the Commission. The record sent up to this court from the Commission is loaded with examples of the Commission's painstaking consideration of all of the suggested provisions of the compromise plan, its findings and conclusions on each provision, its alterations of certain of those provisions, and its careful discharge of its statutory duty. This court does not believe that the mere existence and recognition of a compromise plan presented by important parties in interest is any evidence at all of a failure of the Commission to perform its function. In view of the extremely complicated and contentious nature of a railroad reor-

ganization proceeding, and its tendency to drag on over the years, compromise plans are to be favored rather than criticized, when they tend to expedite reorganaziations and allow greater participation by those not so securely situated.

Comstock next makes the point that the alternative offer of cash or securities to certain senior creditors is not feasible and will result in a higher capitalization than the Commission has held permissible. Stated as simply as possible, the Commission has held that the new company should be capitalized at not more than $560,000,000. It has further provided in its plan (which was suggested by the compromise plan) that certain senior security holders be given an option to take either securities or cash in lieu of securities (the cash offer representing a considerable reduction of claim). The Commission felt, and correctly so, that allocations of securities to full value of claims made the treatment of senior securities fair and equitable, and that the optional cash offer, which could be electively taken, although representing a reduction in total claims, was valid in light of the alternative provisions. It should be carefully noted that in this alternative cash offer lay the very heart of the compromise in the Plan, as it was the scaling down of senior claims by the alternative cash offers that produced greater participation for junior interests.

In order to carry out these provisions the Plan provides that available cash be used for paying security holders these cash options, or be used to purchase the new company's securities necessary to make the allocations if they elected instead to take securities. The securities to be allocated under the optional offers are all either general mortgage bonds, Series "B", or common stock, Class "A", and as to all or any of the senior security holders given an option and not electing to take cash, these Bonds and Stocks would be provided by purchases from allocations already made to others. No original issuance of these securities to meet contingent allocations is contemplated, and although such issuance is recognized as possible it is not considered probable. The Plan provides

specifically the method for putting these provisions into effect:

"Creditors who are entitled to an election to receive securities of one class in lieu of securities of another class or cash in lieu of securities, shall make such election within such time (not earlier than the date upon which the plan is confirmed), and in such manner as the reorganization managers, subject to the approval of the court, shall determine.

After confirmation of the plan, the trustee of the estates of the debtors shall upon request of the reorganization managers pay to them a sum in cash equal to the difference betwen (a) the maximum amount which would be payable to creditors under the alternative offers of cash or securities herein provided for and (b) the amount of cash theretofore distributed to such creditors which is to be credited against cash payable under the plan pursuant to Section A hereof. Said funds, together with any cash refunded to the reorganization managers by creditors who shall elect to take the alternative offer of securities, shall be deposited in a separate account to the credit of the reorganization managers and shall be used by them solely for the following purposes:

(1) On consummation of the plan to pay to creditors who, under the alternative offer of cash or securities, shall have elected to receive cash, the amounts to which such creditors, respectively, are entitled, as [seth] forth in this section T, and

(2) To acquire in the open market or at private sale, including purchases on a "when issued" basis a principal amount of general-mortgage bonds, series B, and a number of shares of common stock which shall not exceed the principal amount of general-mortgage bonds, series B, and the number of shares of common stock which are to be issued to creditors pursuant to their election to take such bonds and stock in lieu of cash."

Comstock argues that should these security holders elect

to take securities, the capitalization of the new company would exceed $560,000,000, for the reason that that total capitalization can only be maintained where not a single security is issued the option holders or where securities can be purchased at the cash offer price. In other words, he argues that where a security holder elects to take security in lieu of cash, the reorganization managers are bound to purchase him a security in the market at the cash option price or issue additional securities.

After consideration, the Court has come to the conclusion that these arguments are not a valid attack on the Plan for two reasons. First, the Court is of the opinion that the possibility of the reorganization managers being able to buy securities at the option price is not as improbable as Comstock assumes. When he argues that the mere presence of the reorganization managers in the market will drive up the price, he overlooks the fact that the managers will not be pressed for time and can buy when the conditions are favorable. Further, he brushes aside the assurances given by certain representatives of large holders of securities which will be exchangeable under the Plan for general-mortgage bonds, Series B, that these representatives would not, subject to the approval at the time of their directors, permit the development of a corner but would recommend to their respective boards of directors that sufficient of these bonds be placed upon the market within the required price limit to meet any need of the reorganization managers. Although the Court realizes that these assurances are in no way legally binding agreements, still the Court has no fear that these parties will fail to assist the reorganization managers in this regard. He further assumes a far higher market price for the Class "A" stock than seems probable to this court, in view of the prospective decreased earnings in the post-war period.

Second, the Commission's Report itself shows that the possibility of such an increased issuance of securities was inherent in the plan and recognized by it and that provision was made for such an eventuality. The Commission's anticipation of this is found in the provision that the re-

organization managers fix the number of shares of each class to be authorized and to be originally issued. Comstock erroneously assumes, however, that if a greater number of shares are issued the capitalization would thereby be increased. His error lies in his failure to recognize that all computations as to this no-par value common stock are based on a purely assigned value of $100.00 per share and that, therefore, any further issue of such stock would not actually increase the total capitalization one whit. Further, any increased issue of common stock would not affect the compensation of those receiving common stock, as Comstock urges, because the Commission's finding of full compensation was definitely made in the light of their recognition of the possibility that a greater number of shares might be issued. Comstock further overlooks the fact that if the allotted cash cannot buy the required securities on the market, that it can then under supervision of this Court be applied to retirement of other debt, which will obviously work to keep down total capitalization.

The Court is quite favorably impressed with the entire scheme embodied in this alternative cash offer device and rather than disapproving it, as Comstock urges, is inclined toward it most favorably for the beneficial result it has had upon the treatment of junior interests. The Court notes with interest the fact that Comstock's voice among the many interested parties is now alone raised in opposition to this provision.

Comstock next attacks the provisions of the Plan which provide for the methods of designating voting trustees, directors and reorganization managers. He alleges that the method selected by the Commission, whereby the five reorganization managers are designated by representatives of major issues of securities, and a panel of directors, is to be designated by similar groups (subject to ultimate selection by the voting trustees), is a delegation of control of the reorganized company to a small group not representative of the security-holders. He urges that the Plan should be altered to provide for the selection of directors and managers by direct vote of the security-holders them-

selves. The Court is not disposed to sustain this, for the reason that similar provisions for the selection of such officers have met the universal approval of the Commission and U. S. District Courts in other reorganizations. So far as this Court can determine, it has always been customary to authorize designations by responsible representatives of major issues. Further, under this Plan the voting trustees are to be selected by the Court itself and actions of the reorganization managers are to be subject to its approval. The Court believes that following this customary reorganization procedure and delegating authority to representatives who have regularly acted is in all respects warranted, and gives no basis for a fear of dominance by an entrenched group.

The Plan provides that the new first mortgage shall contain a provision which shall permit the new company, with the consent of holders of two-thirds, and in some cases three-fourths, of the new first mortgage bonds, to make various amendments and alterations to said mortgage. It further provides that the new general mortgage shall contain provisions permitting certain amendments to it. Comstock attacks these provisions, referring to them as "escape clauses", on the grounds that they constitute an attempt to circumvent the bankruptcy law by permitting future reorganizations out of court, and that they are contrary to public policy. He points out, apprehensively, the many changes that could be made in the Plan at a later date by the use of these "escape clauses". The Court, however, is not impressed by this objection and is of the opinion that these provisions are sound and wise. They are democratic in nature, allowing for voluntary alterations in the mortgages, as need arises, and provide a far less expensive and formal procedure than court action. Surely a provision that in a fair way prevents full-dress bankruptcy proceedings is desirable, rather than vicious as Comstock urges. There is nothing in the statute which prohibits such a device, and the Court is aware that not only have such clauses been approved in other reorganization proceedings but that they are very common today in non-reorganization indentures.

Finally, there is the so-called Comstock Objection No. 19, which was the subject of a separate hearing and upon which extensive evidence was presented. Objection No. 19 reads:

> "19. The Plan is unfair and inequitable by reason of the fact that it 'assumed' the validity of an alleged claim of MOP against NOTM for inter-company advances. The allocation of securities to the said 5¼% Secured Bonds is expressly stated by the Commission to be based on the assumption of the validity of said claim. Any allocation of securities based on the validty of said claim is unfair and inequitable. The National Bankruptcy Act, as amended, requires a full judicial determination on the merits of the validity of said claim. There has been no such determination. The claim is invalid in all respects. It is based on advances purportedly made by MOP to a dominated subsidiary NOTM. Said advances were made in the interests of MOP and not of NOTM. They would not have been made if NOTM had had the benefit of independent management. Detailed objections to the claim of MOP against NOTM are contained in Schedule A annexed hereto and made a part hereof."

Briefly, the Comstock contention amounts to this: that the Missouri Pacific claim against the NOT&M is invalid and, if invalidated, the NOT&M stock, which secures the 5¼% Bonds, would have a value greater than that assigned it by the Commission, which increased value should result in a more favorable treatment of these bonds.

The evidence presented at the hearing of this objection was voluminous and complicated, and cannot be here detailed without unduly prolonging this opinion. The Court has, however, carefully considered the entire record and is of the opinion that, everything considered, the evidence before it does not sustain Comstock's contentions of any [improperiety] on the part of officers and directors or of the invalidity of the inter-company claim. Railroad finance is, of necessity, of a most intricate nature, and after the passage of twenty years, and the death of most participants, doubt can be cast upon almost any financial

transaction. This situation, however, does not amount to a positive showing of impropriety, but rather arises from the extremely intricate nature of the subject matter, which lends itself to strained interpretations when time has blurred the true picture.

Comstock's contentions of the milking of the NOT&M by Missouri Pacific cannot be reconciled with the great benefits conferred upon the Gulf Coast Lines by the Baldwin improvement program. It is not this Court's experience that a parent corporation, when engaged in the type of improper conduct alleged here, pours millions of dollars into the subsidiary to build it up to a position of strength far in excess of that at the date of acquisition. Further, the Court is impressed by the fact that almost all of the transactions of which Comstock complains were entered into only after notice to, and with the approval of, the Interstate Commerce Commission. No substantiation appears for Comstock's innuendo that the Commission was somehow derelict in its duty, or allowed itself to be hoodwinked.

The objector Comstock purchased the securities which gives him entree to this proceeding as a speculation in the latter part of 1942 and in the early part of 1943, and he did not become a party until September 30th, 1943. No facts have been shown that have not been available to all for many years; and Comstock's being a newcomer does not relieve him from the defense of laches. The bonds that he holds are subject to all of the infirmities which existed at the time he bought them. Looking to the entire record, and the dates upon which the information presented became available, the Court is brought to the conclusion that the contention urged, even were it possible to substantiate it, is stale beyond recall, and that there has been inexcusable delay in its presentation. This Court has confidence in its Trustee, and believes that he has fully performed his duties in relation to this inter-company claim. Time and again opportunity has been presented to various persons to come forward but with no result. Comstock cannot contend he is in the position of a person from whom the facts have been concealed. Rather, he has

taken facts apparent to all and only at the twelfth hour has come forward.

Finally, the Court would like to note that the entire attempt by Comstock to disprove the validity of the inter-company claim is not an attack upon those whom he alleges perpetrated a wrong, but, rather, is an attempt to hold other creditors of the railroad responsible for the alleged actions of others. This feature, it appears to the Court, constitutes a basic difference between the alleged situation in this case and the so-called "Deep Rock" case, Taylor vs. Standard Gas & Electric Co., 306 U. S. 307, so heavily relied upon by Comstock. The other creditors whom Comstock's position would injure are certainly as innocent as he of any alleged malfeasance and those whom he attacks are no longer held to be in interest.

Therefore, the entire record considered, the Court is of the opinion that Objection No. 19 and related objections of Andrew W. Comstock to the Plan of Reorganization, and his objection to the claim of the Missouri Pacific against the NOT&M, should be overruled.

Having considered and disposed of all objections, the Court will next address itself to the criteria about which Section 77 (e) of the Act (11 U. S. C. 205) requires that the Judge satisfy himself, regardless of objections. The Court is of the opinion that the requirements of sub-sections 2 and 3 of said section are adequately provided for in the Plan by Paragraph T thereof, and since hearings on expenses and fees incident to the reorganization have already been held within maximum limits fixed by the Commission no omission is found there. As for the provisions of sub-paragraph 1, requiring that the court be satisfied that the Plan "complies with the provisions of sub-section B of Section 77, is fair and equitable, etc.," the very general accord now afforded the Plan is naturally influential in its favor. As a whole, the Court is of the opinion that the Plan meets all of the requirements of the Act. We are, of course, familiar with the prior approved plan, and have carefully studied all recent alterations as well as the actions taken by the Commission in regard to

this Court's suggestions in its second opinion. The Court believes that the Commission has fully complied with the requirements of law and given satisfactory further consideration, and that the Plan now presented is in all respects just and satisfactory and holds forth high prospect for a soundly reorganized Missouri Pacific System.

The formulation of a workable reorganization for this huge system has been a long and difficult task, but the Court now believes that, with the approval of the present Plan, the end of the matter is in sight. Although, as the Commission has said, no plan can be drawn which will receive the unanimous approval of everyone, it appears to the Court that the present Plan achieves as near perfection as human fallibility can attain.

Therefore, there will be entered a separate order overruling Objection No. 19 of Andrew W. Comstock, in accordance with the prior order of this Court as to said Objection, and there will be entered an order overruling all other Objections and Claims for equitable treatment and approving that Plan of Reorganization contained in the Third Supplemental Order of the Interstate Commerce Commission. Counsel is directed to submit draft of said orders on notice for approval and signature.

GEO. H. MOORE,
United States District Judge.

Dated this 21st day of December, 1945.

	Total Claim as of Jan. 1, 1943	Undisturbed	Distribution of Cash or New Se		
			Cash	Collateral Trust Notes 3½%	First Mtg. Bonds C 4%
Missouri Pacific R. R. Co.					
Equipment	$1,000.0000	$1,000.0000	.....	.....	.....
Reconstruction Finance Corp. 6%.	1,428.7196	.....	$230.3560	.....	.....
Bank debt, 6%	1,448.2349	.....	253.0568	.....	.....
Railroad Credit Corp., 1%	1,000.8619	.....	1.0148	.....	.....
First and refunding 5's					
Series A, due Feb. 1, 1965	1,395.8334	.....	.....	.....	$400.00
Series F, due March 1, 1977	1,391.6667	.....	.....	.....	398.00
Series G, due Nov. 1, 1978	1,408.3333	.....	.....	.....	403.00
Series H, due Apr. 1, 1980	1,412.5000	.....	.....	.....	404.00
Series I, due Feb. 1, 1981	1,395.8333	.....	.....	.....	400.00
General 4's, due Mar. 1, 1975	1,393.3334	.....	.....	.....	.....
Serial 5¼'s, due Dec. 1, 1938-56	1,529.3750	.....	.....	.....	.....
Convertible 5½'s, due May 1, 1949.	1,559.1667	.....	.....	.....	.....
St. Louis, I. M. & So. River and Gulf 4's, due May 1, 1933	(4) 709.5238	.....	6.6666	(7) $300.0000	.....
Plaza-Olive Bldg. 6's, due Oct. 1, 1937-40	(5) 1,000.0000	(5) 1,000.0000	.....	.....	.....
Cairo & Thebes First 4's due March 1, 1961	1,133.3331	.....	100.0000	.....	750.00
Little Rock, H. S. & W. first 4's, due Jul. 1, 1939	1,320.0000	.....	.....	.....	.....
Boonville, St. L. & So. first 5's, due Aug. 1, 1951	(6) 1,395.8330	.....	(6) 50.0000	.....	274.00
Central Branch Union Pacific first 4's, due Jun. 1, 1948	1,363.3335	.....	60.0000	.....	370.00
Claims of general creditors			To receive treatment as shown		
Preferred stock	.....				
Common stock	.....				
New Orleans, Texas & M. Ry. Co.					
First mortgage bonds					
Series A, 5½'s, due Apr. 1, 1954.	1,233.7500	.....	.....	.....	640.00
Series B, 5's, due Apr. 1, 1954	1,212.5000	.....	.....	.....	629.00
Series C, 5's, due Aug. 1, 1956	1,195.8333	.....	.....	.....	621.00
Series D, 4½'s, due Aug. 1, 1956.	1,176.2500	.....	.....	.....	611.00
Income 5's, due Aug. 1, 1956	1,062.5025	.....	.....	.....	551.00
Claims of general creditors			To receive treatment as shown		
Capital stock	100.0000	.....	.....	.....	.....
International-Great Nor. R. R. Co.					
Railroad Credit Corp. 1%	1,002.0584	.....	4.0953	.....	.....
First mortgage bonds					
Series A, 6's, due Jul. 1, 1952	1,510.0000	.....	.....	.....	123.00
Series B, 5's, due Jul. 1, 1956	1,425.0000	.....	.....	.....	116.00
Series C, 5's, due Jul. 1, 1956	1,425.0000	.....	.....	.....	116.00
Adjustment 6's, due Jul. 1, 1952	1,735.0000	.....	.....	.....	.....
Claims of general creditors			To receive treatment as shown		

Missouri Pacific Railroad Company

Cash or New Securities for Each $1,000 Principal Amount of Claim or for Each $100 Par Value of Stock.

	Cash and Securities Offered Without Options							Additional Optional Offers (Note 1)					
								First Mortgage Bonds					
Collateral Trust Notes 6½%	First Mtg. Bonds C 4%	General Mortgage A 4½%	General Mortgage B 5%	Pref. Stock 5%	Common Stock A	Common Stock B	Purchase Warrants (Number)	A 3½%	B 3¾%	C 4%	Gen. Mortgage Bonds B 5%	Common Stock A (at $100 a share)	Cash
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	$1,000.0000	$1,000.0000	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	1,000.0000	1,000.0000	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	(2) 1,000.0000	(2) 1,000.0000	.....	.....	.....	.....
.....	$400.0000	$380.0000	$150.0000	$222.0000	.....	.....	.....	.....	.....	.....	.....	$274.0000	$ 71.1000
.....	398.0000	378.0000	149.0000	221.0000	.....	.....	.....	.....	.....	.....	.....	276.0000	71.6300
.....	403.0000	383.0000	151.0000	224.0000	.....	.....	.....	.....	.....	.....	.....	278.0000	72.1200
.....	404.0000	384.0000	152.0000	224.0000	.....	.....	.....	.....	.....	.....	.....	279.0000	72.4600
.....	400.0000	380.0000	150.0000	222.0000	.....	.....	.....	.....	.....	.....	.....	274.0000	71.1000
.....	.....	.....	.....	.....	$1,393.3334	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	750.0000	$ 500.0000	4.1906	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	1,000.0000	8.3875	.....	.....	.....	.....	.....	.....
0000	.....	.....	.....	.....	.....	.....	.....	(3) 400.0000	(3) 400.0000	(3) 400.0000	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	750.0000	283.3331	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	600.0000	.....	720.0000	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	274.0000	.....	.....	274.0000	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	370.0000	230.0000	450.0000	253.3335	.....	.....	.....	.....	.....	.....	.....	.....	.....
ent as shown in footnote 8													
.....	640.0000	455.0000	.....	.....	.....	.....	.....	.....	.....	.....	$138.7500	.....	86.1400
.....	629.0000	447.0000	.....	.....	.....	.....	.....	.....	.....	.....	136.5000	.....	84.7500
.....	621.0000	441.0000	.....	.....	.....	.....	.....	.....	.....	.....	133.8333	.....	83.0900
.....	611.0000	434.0000	.....	.....	.....	.....	.....	.....	.....	.....	131.2500	.....	81.4900
.....	551.0000	392.0000	.....	.....	.....	.....	.....	.....	.....	.....	119.5025	.....	74.1901
ent as shown in footnote 8													
.....	.....	.....	.....	.....	25.0000	50.0000	.3750	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	(2) 1,000.0000	(2) 1,000.0000	.....	.....	.....	.....
.....	123.0000	542.0000	153.0000	244.0000	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	116.0000	512.0000	145.0000	231.0000	.....	.....	.....	.....	.....	.....	.....	503.0000	130.4900
.....	116.0000	512.0000	145.0000	231.0000	.....	.....	.....	.....	.....	.....	.....	473.0000	122.6300
.....	.....	.....	.....	.....	950.0000	500.0000	4.2750	.....	.....	.....	.....	473.0000	122.6300
ent as shown in footnote 8													

Appendix F (Continued)

Notes

1. Under the heading "Additional Optional Offers," holder of claim may elect one, but only one of the offers shown on each line.
2. Approximate figures, as claim settled in new first mortgage bonds is reduced to next lowest multiple of $1,000 by payment of cash.
3. Holders of St. L., I. M. & So. River & Gulf 4's are offered $400 in new first mortgage bonds, series C, with option to take series A or series B, whichever is not taken by the R. F. C.
4. Principal amount of St. L., I. M. & So. River & Gulf 4's as of 1-1-43..... $34,508,000
   Less payment in cash of 30% (Court Order No. 2373 dated 9-18-43)..... 10,352,400

   Balance of claim to be satisfied in new securities..... 24,155,600
   New first mortgage bonds, series C offered.....40% 13,803,200
   New collateral trust notes offered.....30% 10,352,400
5. Offered new Plaza-Olive Building first mortgage bonds.
6. In addition, holders of outstanding bonds shall receive a pro rata share of the net cash proceeds from the abandoned line of this railroad. As of 12-31-42, this amounted to $254.32 per $1,000 bond.
7. The plan also provides for the possible underwriting of the collateral trust notes. If this is arranged, holders of River and Gulf 4's would have the option of either accepting the $300 principal amount of collateral trust notes shown, or in lieu thereof, cash for the notes at a price of not less than par, plus accrued interest.
8. Table above does not include provision for settlement of claims of general creditors, which are as follows:

   Preferred claims—to be paid in cash.

   General unsecured claims:

   Missouri Pacific—
   to receive for each $1,000 of principal, 10 shares of common stock, class B; and for each $1,000 of unpaid interest to the effective date of the plan, a warrant to subscribe to 15 shares of new common stock, class B, at the price of $100 a share.

   New Orleans, Texas & Mexico (Gulf Coast Lines)—
   to receive for each $1,000 of total claim, including principal and unpaid interest to the effective date of the plan, 10 shares of common stock, class A.

   International-Great Northern—
   to receive for each $1,000 of total claim, including principal and unpaid interest to the effective date of the plan, a warrant to subscribe to 10 shares of new common stock, class B, at the price of $100 a share.

(Appearances of Parties and Docket Entries relating to Hearings held on January 18, 1945 with respect to order or orders proposed to be made overruling objections to Plan of Reorganization and approving said Plan.)

Appearances of Parties and Docket Entries relating to the Hearings held on January 18, 1945 by The District Court with respect to the order or orders proposed to be made by the District Court overruling objections to the Plan of Reorganization of Missouri Pacific Railroad Company and approving said Plan.

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Attorney for Trustee

"A portion of the Docket Entries of the Clerk of the United States District Court Pertaining to the Hearings on January 18, 1946 with respect to the order or orders proposed to be made by the District Court overruling objections to the Plan of Reorganization of Missouri Pacific Railroad Company and approving said Plan follow:

1946

Jan. 14 Draft of proposed Findings of Fact, Conclusions of Law and order approving plan of reorganiza-

tion, copy of notice of presentment thereof to the court on January 18, 1946 and affidavit as to service of foregoing on parties in interest, filed by counsel for Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Co.

Draft or proposed Findings of Fact, Conclusions of Law and Order overruling Comstock Objection No. 19 and related objections, copy of notice of presentment thereto to the Court on January 18, 1946, and [affidavid] as to service of foregoing on parties in interest filed by counsel for Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Co.

Jan. 18 Group of Institutional Holders of First and Refunding Mortgage Bonds of Missouri Pacific Railroad Co., pursuant to notice heretofore given to parties in interest, and after oral statement of counsel appearing for various parties in interest relative thereto, submits to the Court proposed findings of fact, conclusions of law and order approving plan of reorganization, as well as separate proposed findings of fact, conclusion of law, and order approving plan of reorganization, as well as separate proposed findings of fact, conclusions of law and order overruling Comstock's Objection 19 and related Objections.

Memorandum of Protective Committee for First Mortgage Bondholders of International Great Northern Railroad Co., requesting amendment of Court's opinion of Dec. 21, 1946, as well as separate memorandum of aforesaid Protective Committee as to foregoing proposed order approving plan of reorganization, filed by leave.

Statement of aforesaid Group of Institutional Holders in amplification of point arising out of statement contained in designated portion of Court's opinion of Dec. 21, 1945 approving plan, filed by leave.

Jan. 22 Findings of fact, conclusions of law and order overruling Comstock's Objection 19 and related Objections, filed.

Findings of fact, conclusions of law, and order approving plan of reorganization filed.

Jan. 23 Transcript of proceedings had before the Court January 18, 1946 on submission to the Court of proposed findings of fact, conclusions of law and order overruling Comstock's Objection 19 and related objections, and separate proposed findings of fact, conclusions of law and order approving plan of reorganization filed.

Statement on Behalf of the Group of Institutional Investors Holding First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company.

(Filed January 18, 1946.)

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935

We wish to call the attention of the Court to a point which arises out of a statement in the Court's Opinion approving the Plan as follows:

"Further, he brushes aside the assurances given by certain representatives of large holders of securities which will be exchangeable under the Plan for general-mortgage bonds, Series B, that these representatives would not, subject to the approval at the time of their Directors, permit the development of a corner but will recommend to their respective Boards of Directors that sufficient of these bonds be placed upon the market within the required price limit to meet any need of the Reorganization Managers. Although

the court realizes that these assurances are in no way legally binding agreements, still the court has no fear that these parties will fail to assist the Reorganization Managers in this regard."

The above quoted portion of the Court's opinion refers to the following statement which appeared at pages 10-12 of the Group's Brief dated March 3, 1945 in support of the Plan:

"The foregoing discussion has dealt only with the alternative offer of cash or common stock, class A. What we have said in this connection is equally applicable to the provisions of the Plan for an alternative of cash or General Mortgage Bonds, Series B, the only exception being that the reorganization managers must devote the fund placed in their hands for the purpose of acquiring new General Mortgage Bonds, Series B, to the purchase of bonds of that class.

"In this connection some comment appears desirable concerning the slanderous insinuations made on page 13 of the brief with respect to the so-called 'agreement' concerning General Mortgage Income B Bonds, which agreement is referred to by the Commission in its Report as follows:

"'As to the General Mortgage Bonds, an agreement has been secured by the proponents of the Plan from certain of the parties to this proceeding who will be entitled to receive such bonds under the terms of the Plan, to sell to the Reorganization Managers, if necessary, a sufficient amount of the bonds at the maximum price.' (R. 20771)

"This statement by the Commission appears open to misconstruction. A more accurate statement was made on this point in the brief filed by the First and Refunding Protective Committee on December 1, 1943, with the Interstate Commerce Commission, in which it was said on page 16:

"'* * * certain representatives of large holders of securities which will be exchangeable under the

Plan for General Mortgage Bonds Series B have given such assurances as they are legally permitted to give, to the effect that they will tender to the Reorganization Managers the necessary amounts of Series B Bonds within the required price limit, thus providing a safeguard against the only possible danger, i. e., a corner on the supply of Income Bs.'

"This would seem to be sufficiently clear but, in order to avoid any further misconstruction, we can elaborate this statement as follows: At the time the so-called assurances were given, the only possible danger that appeared to exist in connection with the acquisition of the General Mortgage B Bonds was the possibility that the reorganization managers might be unable to acquire a sufficient amount of these bonds if they were deliberately withheld from the market. The assurances which were given were given only against this possibility, i. e., representatives of certain of the insurance companies who on the basis of their holdings at that time would receive substantial blocks of the Series B Income Bonds stated that they would recommend to their respective boards of directors that their Series B Income Bonds be placed upon the market if it was found otherwise impossible to meet the requirements of the reorganization managers under the Plan. As under the laws governing the investments of such insurance companies it would be impossible for them to make any binding agreement for the future disposition of their property except pursuant to definite contracts of sale for definite amounts of securities at definite prices, all approved by their boards of directors, the assurances were not agreements to sell but were representations that the managements of the companies involved would not, subject to the approval at the time of their directors, permit the development of a corner. There has never been anything secret about this 'agreement,' although there appears to have been some confusion as to the nature of 'such assurances as they are legally permitted to give' on the part of persons who have not

the court realizes that these assurances are in no way legally binding agreements, still the court has no fear that these parties will fail to assist the Reorganization Managers in this regard."

The above quoted portion of the Court's opinion refers to the following statement which appeared at pages 10-12 of the Group's Brief dated March 3, 1945 in support of the Plan:

"The foregoing discussion has dealt only with the alternative offer of cash or common stock, class A. What we have said in this connection is equally applicable to the provisions of the Plan for an alternative of cash or General Mortgage Bonds, Series B, the only exception being that the reorganization managers must devote the fund placed in their hands for the purpose of acquiring new General Mortgage Bonds, Series B, to the purchase of bonds of that class.

"In this connection some comment appears desirable concerning the slanderous insinuations made on page 13 of the brief with respect to the so-called 'agreement' concerning General Mortgage Income B Bonds, which agreement is referred to by the Commission in its Report as follows:

"'As to the General Mortgage Bonds, an agreement has been secured by the proponents of the Plan from certain of the parties to this proceeding who will be entitled to receive such bonds under the terms of the Plan, to sell to the Reorganization Managers, if necessary, a sufficient amount of the bonds at the maximum price.' (R. 20771)

"This statement by the Commission appears open to misconstruction. A more accurate statement was made on this point in the brief filed by the First and Refunding Protective Committee on December 1, 1943, with the Interstate Commerce Commission, in which it was said on page 16:

"'* * * certain representatives of large holders of securities which will be exchangeable under the

Plan for General Mortgage Bonds Series B have given such assurances as they are legally permitted to give, to the effect that they will tender to the Reorganization Managers the necessary amounts of Series B Bonds within the required price limit, thus providing a safeguard against the only possible danger, i. e., a corner on the supply of Income Bs.'

"This would seem to be sufficiently clear but, in order to avoid any further misconstruction, we can elaborate this statement as follows: At the time the so-called assurances were given, the only possible danger that appeared to exist in connection with the acquisition of the General Mortgage B Bonds was the possibility that the reorganization managers might be unable to acquire a sufficient amount of these bonds if they were deliberately withheld from the market. The assurances which were given were given only against this possibility, i. e., representatives of certain of the insurance companies who on the basis of their holdings at that time would receive substantial blocks of the Series B Income Bonds stated that they would recommend to their respective boards of directors that their Series B Income Bonds be placed upon the market if it was found otherwise impossible to meet the requirements of the reorganization managers under the Plan. As under the laws governing the investments of such insurance companies it would be impossible for them to make any binding agreement for the future disposition of their property except pursuant to definite contracts of sale for definite amounts of securities at definite prices, all approved by their boards of directors, the assurances were not agreements to sell but were representations that the managements of the companies involved would not, subject to the approval at the time of their directors, permit the development of a corner. There has never been anything secret about this 'agreement,' although there appears to have been some confusion as to the nature of 'such assurances as they are legally permitted to give' on the part of persons who have not

participated in the negotiations and who failed to read the record carefully."

In the summer of 1943 when these assurances were given it was the general expectation that the compromise plan thereby made possible would result in the consummation of the reorganization within a reasonably short time. In view of market conditions at that time, the only risk which appeared likely, before the Plan could be consummated, was the possible inability of the Reorganization Managers to acquire enough General Mortgage Bonds Series B to meet Plan requirements without running up the price far beyond intrinsic value.

As a result of hotly contested litigation, consummation of the Plan has been delayed long beyond the expectation of the parties to the compromise. The probability of further appeals will result in further delays. In the meantime there has been a substantial change in conditions. The very large earnings due to the War with the resultant substantial retirement of senior debt and the general rise in the market value of securities have brought about an increase in the intrinsic and probable market values of the new General Mortgage Bonds Series B to a point far beyond what was considered possible at the time the assurances were given. The representatives of the companies who gave the assurances intend to fulfill their undertaking by making the recommendations to their respective boards of directors, with every expectation that if their approval is possible under then existing conditions, it will be forthcoming. Nevertheless these representatives deem it only fair to call the Court's attention to the fact that those boards of directors cannot sell securities at prices substantially below their actual values at the time without violation both of their statutory duty and their fiduciary duty to policyholders. In view of present market conditions and of the enhanced intrinsic position of the General Mortgage Bonds Series B it appears quite possible that they may be selling at prices substantially in excess of the option price at the time of consummation of the Plan. Under these circumstances, fulfillment of the "assurances" might be delayed or might even be permanently impossible.

Furthermore the statutes governing the investments of these companies require that all assets held as reserves against the companies' respective liabilities to their policyholders be at all times subject to the control of their respective boards of directors. This being so, it is quite possible that the directors may feel it their duty, if the market prices for the First and Refunding Bonds should go higher, to liquidate all or part of their holdings. In such an event, it would obviously be impossible for these companies to furnish the required General Mortgage Bonds Series B.

The foregoing statement is not intended to suggest any lack of confidence in the Plan or that the provisions of the Plan with respect to the alternative offers of cash or General Mortgage Bonds Series B are in any way impaired. If the cash options are not exercised the Reorganization Managers will have approximately $3,600,000 with which to purchase a maximum of about $5,800,000 principal amount of General Mortgage Bonds Series B. It is not essential that these funds be used immediately upon consummation to purchase the Series B Bonds. The Reorganization Managers may wait until market conditions permit such purchases. Indeed the situation is not greatly different from that presented by the alternative offers of cash or stock.

Dated, January 18, 1946.

CADWALADER, WICKERSHAM & TAFT,
LOWENHAUPT, WAITE, CHASNOFF &
STOLAR,
Attorneys for the Group of Institutional
Investors holding First and Refunding
Mortgage Bonds of Missouri Pacific
Railroad Company.

Of Counsel:

W. LLOYD KITCHEL,
JACOB CHASNOFF,
CHARLES W. McCONAUGHY.

Findings of Fact, Conclusions of Law, and Order Approving Plan of Reorganization.

(Filed January 22, 1946.)

Order No. 2604-B.

In the
District Court of the United States,
Eastern Division, Eastern Judicial District
of Missouri.

In the Matter of	**In Proceedings for the Reorganization of a Railroad. No. 6935.**
Missouri Pacific Railroad Company,	
Debtor.	

The Interstate Commerce Commission (hereinafter called the "Commission") certified to this Court the Plan of Reorganization, as embodied in the Commission's Third Supplemental Order dated October 9, 1944, of the Debtor and subsidiary debtors, parties to these proceedings (excepting the subsidiary debtor Missouri Illinois Railroad Company), together with a transcript of the proceedings before the Commission. All parties in interest have been given due opportunity to file their objections in writing to said plan and their claims for equitable treatment, and have been heard or given an opportunity to be heard thereon at a hearing duly noticed pursuant to an Order of this Court, No. 2604 (R. 21031). The Court having heard all of the testimony given at said hearing and having considered all of the evidence, including the exhibits, and having considered the record certified to the Court by the Commission, the briefs and arguments of counsel and the entire record in these proceedings, and being fully advised in the premises, and having filed its opinion herein on December 21, 1945 (which opinion was amended by orders entered herein on December 28, 1945 and January 8, 1946) and proposed findings of fact, conclusions of law and order having been presented upon due and legal notice as provided in said opinion

The Court Finds

1. That the plan as contained in said Third Supplemental Order of the Commission dated October 9, 1944 (hereinafter called the "Plan")

(a) includes provisions modifying and altering the rights of creditors of the Debtor and subsidiary debtors, other than Missouri Illinois Railroad Company, (hereinafter collectively referred to as the "Debtors");

(b) provides for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount or funded debt, and rent for leased railroads) in such an amount that after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there will be adequate coverage of such fixed charges by the probable earnings available for the payment thereof;

(c) provides adequate means for the execution of the Plan; and

(d) in all other respects complies with the provisions of sub-section (b) of Section 77.

2. That the Plan is predicated upon findings by the Commission which are supported by material evidence and are in accordance with legal standards and on the basis of said findings it

(a) is fair and equitable;

(b) affords due recognition to the rights of each class of creditors and stockholders;

(c) does not discriminate unfairly in favor of any class of creditors or stockholders;

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders.

3. That the approximate amounts to be paid by the Debtors, or by any corporation or corporations acquiring the Debtors' assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they

can be ascertained at the date of said hearing, are no more than reasonable and are within such maximum limits as are fixed by the Commission. Such additional amounts as may be required to be paid out of the estates of the Debtors, or by the reorganized Debtors or by any corporation or corporations acquiring the Debtors' assets, for services performed and expenses and fees incurred since January 8, 1945 in connection with the proceedings and Plan will, when such services, expenses and fees have been ascertained, be subject to the approval of this Court within such maximum limits as are fixed hereafter by the Commission.

4. That the Plan provides for the payment of all costs of administration and all other allowances made or to be made by this Court.

5. That the Plan provides for the payment of all claims of the United States for taxes, and that the United States is not a creditor on any claims for customs duties.

6. The foregoing findings shall be taken and deemed to be findings of fact, and in addition, to the extent appropriate, conclusions of law.

It Is Ordered, Adjudged and Decreed:

I.

That all objections heretofore filed herein to the Plan and all claims heretofore filed herein for equitable treatment other than that provided by the Plan are hereby severally overruled and denied with the following exceptions:

(1) Andrew W. Comstock's Objection 19 and Related Objections, to the extent that they are dependent on Objection 19, and his claim for equitable treatment based thereon (said Related Objections being numbered 1, 2, 3, 4, 5, 6, 7, 8, 13 and 26), which objections and claim for equitable treatment are overruled and denied by separate order entered herein concurrently herewith pursuant to Order No. 2707 (R. 21829), and

(2) Andrew W. Comstock's Objections 20, 21, 22 and 23 and his claim for equitable treatment based thereon,

concerning which objections and claim for equitable treatment the Court reserves decision pending the separate hearing thereon heretofore ordered by the Court.

II.

That said Plan be and it hereby is in all respects approved.

III.

That the finding of the Commission that the equity of the holders of the Debtor's preferred stock has no value be and it hereby is affirmed.

IV.

That the finding of the Commission that the equity of the holders of the Debtor's common stock has no value be and it hereby is affirmed.

V.

That the finding of the Commission that claims against the Debtors entitled to priority over their respective mortgages, current liabilities and obligations incurred by the bankruptcy trustees during the reorganization proceedings, to the extent unpaid at the date of consummation of the Plan, are not adversely and materially affected by the Plan, is hereby affirmed.

VI.

That the finding of the Commission that claims under certain guaranties and agreements executed in connection with contracts as described in the proofs of claim enumerated in Paragraph T of the Plan, whereby the Debtors or their predecessors or the trustee of the estates of the Debtors acquired certain rights with respect to terminal operations, are not adversely and materially affected by the Plan, is hereby affirmed.

VII.

That the finding of the Commission that preferred claims of any of the Debtors not entitled to priority over their

respective mortgages are not materially and adversely affected by the Plan is hereby affirmed.

VIII.

That the finding of the Commission that claims under contracts made by the trustee of any of the Debtors pursuant to his duties as such trustee, or made by any of the Debtors subsequent to March 31, 1933, and prior to the appointment of the trustee, and claims under executory contracts made by any of the Debtors prior to March 31, 1933, not disaffirmed by the trustee prior to the time set by order of the Court for disaffirmance, will not be adversely and materially affected by the Plan, is hereby affirmed.

IX.

That the Clerk of this Court shall forthwith send a certified copy of this Decree and of the Opinion, as amended, of this Court herein to the Commission.

Enter:

GEO. H. MOORE,
District Judge.

Dated, January 22nd, 1946.

(Order No. 2910 of District Court directing that Trustee have additional six months within which to consider and determine which of the leases, contracts and arrangements between debtors, etc., should be adopted or should be renounced or disaffirmed.)

On March 22, 1946 the District Court entered Order No. 2910. This Order directed that the Trustee shall have an additional period of six months, beginning April 1, 1946, within which to consider and determine which of the leases, contracts and arrangements between the debtors, or any of them, and any other parties, should be adopted or should be renounced or disaffirmed.

Petition

Of Trustee For Advice and Directions With Respect to Compromise and Settlement of the Claim of Reconstruction Finance Corporation Against Missouri Pacific Railroad Company, Debtor.

Petition No. 2928.

(Filed April 25, 1946.)

In the

District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

Comes now Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, and respectfully states to the Court:

1. That periodically during the last several years, Trustee has given consideration to the advantages which might accrue to the estate of Missouri Pacific Railroad Company, Debtor, and its creditors from a satisfactory settlement of the claim of the Reconstruction Finance Corporation (hereinafter called the R. F. C.) against said Debtor Estate, should the cash position of the trust estate be such as to warrant and permit retirement of said indebtedness. Under date of November 21, 1945, the R. F. C. addressed a letter to Trustee, stating that in the opinion of the Directors of said Corporation, their claim against Debtor Estate should be paid and offering to accept in full settlement and discharge of said claim "a cash payment equal to the principal amount of said loans, plus interest accrued on the notes evidencing said loans at the rate

expressed in said notes to the date of bankruptcy (April 1, 1933) and at the rate of 4% per annum from the date of bankruptcy to the date of payment of said claim, less cash payments heretofore credited by this Corporation to interest on said loans, upon condition that said payment shall be made within sixty days from the date of this letter."

2. That after some preliminary correspondence and after Trustee had again carefully reviewed the matter, he reached the conclusion that in view of the improvement of earnings of the trust estate during recent years, the resulting accumulation of cash, the interest saving incident thereto and other advantages which would come to the trust estate from the settlement of said claim, it should be compromised and settled if the R. F. C. would agree to such action on fair terms and conditions and if within the legal or equitable powers of Trustee so to do.

3. Trustee further states that on Friday, January 18, 1946, he conferred with the Hon. Charles B. Henderson, Chairman of the Board of the R. F. C. at his office in Washington, D. C., on the question of settlement of said claim at which conference Trustee advised Chairman Henderson that recently and before receiving his letter of November 21, 1945, he had reached the conclusion that his funds were sufficient to warrant retirement of the claim of the R. F. C. and that he would undertake to carry out a settlement of the claim if fair and reasonable terms could be agreed upon; that after receipt of Chairman Henderson's letter proposing settlement of the claim, Trustee had communicated with representatives of the Institutional Group representing holders of Missouri Pacific First and Refunding Mortgage Bonds to ascertain whether they would offer opposition to such a settlement and had been advised by them that they would oppose a settlement thereof on the ground that it would constitute a preference; that the Trustee thereupon submitted the question to his counsel, Russell L. Dearmont, and also to Thos. T. Railey, Assistant to Counsel for Trustee, who in a joint opinion dated January 15, 1946, advised Trustee that it

was their conclusion that substantially all of the cash held by the Trustee of the Missouri Pacific Railroad Company, Debtor, was subject to an equitable lien on behalf of the Missouri Pacific First and Refunding Mortgage Bondholders and that the use of such cash to discharge the claim of the R. F. C. would constitute a preference; that if counsel for the R. F. C. did not agree with the opinion of his counsel or doubted the correctness of the conclusions reached therein and the R. F. C. desired to have the Court pass upon the issue, Trustee would be willing to file a Petition asking the Court for advice and directions in the premises, provided the R. F. C. would accept in full discharge of its claim the principal amount thereof with interest at the rate of 6% per annum to the date of bankruptcy (April 1, 1933), 4% to the effective date of the Modified Plan of Reorganization (January 1, 1943), and 3½% thereafter to the date of payment, less the amount of payments already made to the R. F. C. representing income from collateral held by it as security for said claim; that this proposal was based upon the treatment of the R. F. C. claim in the Modified Plan of Reorganization which the Corporation had stated was acceptable to it; that Chairman Henderson requested that the aforesaid proposal be submitted to the R. F. C. in writing for its further consideration; that at the conclusion of the conference, Trustee further suggested that the R. F. C. give very serious consideration to modifying its offer of settlement by reducing the rate of interest charge from the date of bankruptcy to the date of settlement to 2½% per annum, or in any event, not in excess of 3% per annum, and suggested that such a proposal would mean a substantial saving to the trust estate and might conceivably remove opposition which might otherwise be encountered; that under date of January 21, 1946, Trustee addressed a letter to Chairman Henderson of the R. F. C. setting forth the terms of Trustee's oral proposal made at the aforesaid conference; that thereafter, on February 27, 1946, Trustee received a letter from Chairman Henderson, dated February 21, [1945], advising that the proposal of payment in said letter had been carefully considered by the Directors of the R. F. C. and that they had concluded they would

not be warranted in accepting settlement of the claim on any basis less favorable than that set forth in their letter of November 21, 1945, and that the sixty-day limitation stated in said letter having expired, the offer of settlement set forth therein was withdrawn and cancelled; that on April 1, 1946, Trustee again conferred with Chairman Henderson of the R. F. C. at his office in Washington, D. C., on the subject of settlement of said claim, and thereafter, on April 15, 1946, received a letter, dated April 11, 1946, from the Chairman renewing the R. F. C.'s offer to settle said claim on the same terms as submitted by their offer of November 21, 1945, and upon the further condition that Trustee advise the R. F. C. within twenty days that he was willing to accept said offer subject to the obtaining of the necessary Court approval and subject to such approval being obtained and such settlement being made not later than ninety days from date; that Chairman Henderson, by subsequent letter of date April 16, 1946, expressed willingness that the aforesaid twenty and ninety day limitations should begin April 15, 1946; that counsel for the R. F. C. is of the opinion that, despite the aforesaid joint opinion of Trustee's counsel and assistant counsel, dated January 15, 1946, and without taking issue with the conclusions of said opinion, the question of the payment of the R. F. C.'s aforesaid loans to the Missouri Pacific should be considered as an administrative matter to be decided by this Honorable Court in its discretion, and that since the R. F. C.'s loans to the Missouri Pacific have a security position clearly superior to the publicly held First and Refunding Mortgage Bonds it would be entirely proper for the District Court in its discretion to approve the payment of the R. F. C. loans.

4. Under date of February 29, 1936, R. F. C. duly filed in these proceedings its Proof of Claim No. 502 (Rec. p. 3693), in the principal sum of $23,134,800.00, evidenced by six promissory notes, all bearing interest from date at the rate of 6% per annum, as follows:

Note dated March 31, 1932, due March 31, 1935, for the principal amount of $2,950,000.00;

Note dated October 1, 1932, due October 1, 1933, for the principal amount of $10,150,000.00; (Said note represents consolidation of three loans evidenced by notes due on demand, one dated February 15, 1932, for $1,500,000.00, one dated February 25, 1932, for $2,800,000.00, and one dated March 31, 1932, for $5,850,000.00).

Note dated April 8, 1932, due April 8, 1935, for the principal amount of $805,000.00;

Note dated April 29, 1932, due April 29, 1935, for the principal sum of $3,195,000.00;

Note dated February 1, 1933, due on demand, for the principal sum of $3,000,000.00;

Note dated March 1, 1933, due on demand, for the principal sum of $3,034,800.00.

The following securities are pledged as security for the payment of said notes, to-wit:

	Par Value	Market or Estimated Value
Capital Stock:		
American Refrigerator Transit Co...	$ 92,700.00	$ 1,854,000.00
Fort Worth Belt Railway Co.....	160,000.00	320,000.00
International-Great Northern Railroad Company	7,498,900.00	.....
New Orleans, Texas & Mexico Railway Company	505,000.00	202,000.00
Texas and Pacific Railway Co. Common	11,475,000.00	5,536,688.00
Bonds:		
Denver & Rio Grande Western R. R. Co., Refdg. & Imp.....	1,000,000.00	615,000.00
Missouri Pacific Railroad Co. Convertible Gold Bonds	398,000.00	285,448.00
Missouri Pacific Railroad Co. 1st & Refdg., Series I.....	22,250,000.00	21,937,500.00
New Orleans, Texas & Mexico Ry. Co. 1st Mtge., Series D.....	1,900,000.00	1,823,500.00
International-Great Northern R. R. Co. Adj. Mtge. Bonds.....	3,095,000.00	1,021,787.00
Interstate Ry. Co., 1st Mtge. Bonds	1,622,000.00	97,104.00
Prescott Northwestern R. R. Co. 1st Mtge. Bonds	55,000.00	55,000.00
Notes:		
New Orleans, Texas & Mexico Ry. Co.	2,355,226.75	.....
International-Great Northern Ry. Co.	2,436,510.25	.....
Totals.....	$71,994,337.13	$43,858,025.00

5. That the total interest accrued on said loan to June 30, 1946, figured at the contract rate of 6% per annum amounts to $19,486,912.00; that to date, R. F. C. has received payments, primarily through the application of dividends and interest collected on pledged collateral, in the sum of $10,454,119.00, leaving interest accrued and unpaid at June 30, 1946, amounting to $9,031,793.00; that under the offer of settlement contained in the aforesaid letter of R. F. C., dated April 11, 1946, the amount of unpaid interest at June 30, 1946, will amount to $2,898,585.00; that this sum, added to the principal amount of said debt, $23,134,800.00, would make the amount to be paid if said offer is accepted and the transaction closed on said date, $26,033,385.00.

6. Under the Plan of Reorganization set forth in the Supplemental Report of the Interstate Commerce Commission, dated July 4, 1944, and the Third Supplemental Report and Third Supplemental Order of the Commission, dated October 9, 1944, approved by an Order of this Court duly entered January 22, 1946, the claim of the R. F. C. is allotted cash and new securities in the following amounts:

Cash	$ 5,329,242.00
Series A 3½% 15-Yr. First Mortgage Bonds, Or Series B 3¾% 25-Yr. First Mortgage Bonds	23,134,800.00
Total Cash and New Securities	$28,464,042.00

The aforesaid cash payment allotted to the R. F. C. represented payment in cash of unpaid interest at 6% to the date of bankruptcy and 4% thereafter to January 1, 1943, the effective date of said Plan.

Paragraph A of said Plan of Reorganization as set forth in said Order of the Commission (Rec. p. 20894) provides, among other things, that "cash in the treasuries of the debtors available for distribution may be disributed to creditors from time to time, pending the consummation of the plan, as the court may from time to time direct." In its Third Supplemental Report, the Commission discussed the possibility of further cash distributions at the direction of the Court, and, among other things, said:

"In determining cash distributions as well as fixing total capitalization as stated in our report, we recognized that the cash position of the debtor's trustee would vary in the future and that 'surplus cash' might either exceed or fall short of our estimates. We believed and are still of the opinion, that the court, in the light of current conditions, should determine any amounts of cash available and not authorized by the plan, which might be so distributed, within the framework of the plan, from time to time up to the date of consummation of the plan. In fixing the amount of capitalization and in approving the provision of the plan authorizing cash distributions upon order of the court prior to consummation, we recognized the possibility that as of the date of consummation the system capitalization might be somewhat less than the $560,000,000 approved by us. We contemplated, however, insuring that amount as the maximum. Even if the collateral-trust notes are not issued, an increase in equipment obligations resulting from a future demand for, and availability of, additional equipment prior to the date of consummation of the plan may result in total capitalization as of that time being about the same as the maximum fixed by us." (Rec. p. 20887).

7. Trustee further states that his estimated cash and cash equivalent at June 30, 1946, after meeting the requirements for distribution under the Modified Plan of Reorganization, including cash to be paid bondholders and interest on the new securities from the proposed effective date of said Plan, January 1, 1943 to June 30, 1946, and after deducting $15,000,000.00 for working fund and contingencies, all taxes accrued and unpaid and estimated Federal Income and Excess Profit tax liability at June 30, 1946, estimated reorganization expenses of $2,000,000.00, reserve for deferred maintenance of $3,730,000.00 and reserve for land grant deductions of $5,350,000.00, amounts to $24,857,320.00, to which should be added $2,623,730.00 representing an adjustment on account of the elimination of said claim from the requirements of said Plan of Reorganization. Giving effect to this adjustment, the esti-

mated cash or cash equivalent available for payment of said R. F. C. claim at June 30, 1946, would be $27,481,050.00.

8. Trustee further states that settlement of said claim at June 30, 1946, for $26,033,385.00 as proposed by the R. F. C. would be $6,133,208.00 less than the full amount of the principal and accrued interest due on said claim at said date; that said settlement would result in an annual interest saving, based on the contract rate, of $1,388,088.00; that it would release collateral held by the R. F. C. as security for said loan, the value of which, taken at the current market price thereof or where no market price is available at a reasonable estimated value, is $43,858,025.00, subject only to the lien of the Railroad Credit Corporation for the payment of a loan amounting at June 30, 1946, to $1,934,507.00; that Trustee has advised the R. F. C. that he is willing to accept its aforesaid offer of settlement if this Court will advise and direct him so to do.

9. That on June 7, 1933, Trustees of the Missouri Pacific Railroad Company First and Refunding Mortgage filed their Petition No. 44 (Rec. p. 269), in these proceedings, asserting the claim of the bonds secured by said Mortgage against said trust estate and praying, among other things, that all tolls, incomes, rents, revenues, issues and profits of the mortgaged property be impounded, segregated and sequestered for the benefit of said petitioners, as Trustees, and of the holders of said First and Refunding Bonds; that on April 24, 1936, the Corporate Trustee under the Missouri Pacific Railroad Company General Mortgage filed its Proof of Claim No. 504 (Rec. p. 3707), in behalf of the bonds secured by said Mortgage which is a lien on all security pledged under said First and Refunding Mortgage, subject only to the prior lien thereon of the First and Refunding Mortgage, and which is in substantially the same terms and form as said first and refunding Mortgage; that substantially all of the funds now held by Trustee in behalf of said trust estate have come from the operation of the railroad properties which are subject to the liens of the aforementioned Mortgages; that if and to the extent that the terms of said Mortgages and the claims filed by

said Mortgage Trustees herein create and establish liens upon all or any part of the funds proposed to be used in said compromise and settlement of the claim of the R. F. C., said mortgage creditors may be entitled to be subrogated to the extent of the funds so used, to any rights and liens held by the R. F. C. in said pledged collateral.

Wherefore, the premises considered, Trustee respectfully prays that an Order be duly entered herein:

(1) Advising and directing Trustee whether he shall compromise, settle and pay the aforesaid claim of the R. F. C. against Missouri Pacific Railroad Company, Debtor, upon the terms aforesaid proposed by the R. F. C., to-wit, pay the R. F. C. within ninety days from April 15, 1946, the principal amount of said loans, plus interest accrued on the notes evidencing said loans at the rate expressed in said notes (6%) to the date of bankruptcy (April 1, 1933), and at the rate of 4% per annum from the date of bankruptcy to the date of settlement, less the amount of payments made to the R. F. C. representing income from collateral held by it as security for its said claim;

(2) If the Court shall advise and direct Trustee to make such settlement, that Trustee be authorized upon making said settlement to cancel the notes evidencing said debt and to receive and hold all collateral held by the R. F. C. as security therefor, subject to the lien, if any, of The Railroad Credit Corporation, and subject to such lien, if any, as the holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds and the holders of Missouri Pacific General Mortgage Bonds may have or be entitled to by reason of the lien, if any, which they may have upon the cash of the trust estate used to retire said indebtedness;

(3) And for such further or other authority or direction as to the Court may seem meet or proper in the premises.

GUY A. THOMPSON,
Trustee.

RUSSELL L. DEARMONT,
Counsel for Trustee.

United States of America
Eastern Judicial District of Missouri
City of St. Louis

Guy A. Thompson, being first duly sworn, deposes and states that he has read the foregoing Petition, and that the facts stated therein are true, as he verily believes.

GUY A. THOMPSON.

Subscribed and Sworn to before me this 24th day of April, 1946.

My Commission expires March 8, 1950.

HARRIET COX,
Notary Public.

(Seal)

Answer of Secured Banks to the Petition of the Trustee for Advice in Respect of the Compromise and Settlement of the Claim of Reconstruction Finance Corporation Against Missouri Pacific Railroad Company, Debtor.

(Filed May 9, 1946.)

Now comes J. P. Morgan & Co. Incorporated, acting for itself, Kuhn, Loeb & Co. and Guaranty Trust Company of New York, its associates, as secured creditors of the Debtor above mentioned (J. P. Morgan & Co. Incorporated and its associates are hereinafter called "respondents"), and, in the answer to the petition of the Trustee for advice and directions with respect to the compromise and settlement of the claim of Reconstruction Finance Corporation against Missouri Pacific Railroad Company, Debtor, (herein called Missouri Pacific) respectfully allege:

1. Upon information and belief, respondents admit the allegations contained in paragraphs of the said petition marked 1, 2, 3 and 4 except so much of the allegations

contained in said paragraph 4 as recite alleged market and estimated values attributed to the securities pledged to secure payment of the notes of the Missouri Pacific held by Reconstruction Finance Corporation and, in respect of said securities, respondents allege that the market value of such of said securities as are traded in on the securities markets vary from day to day and that the market values stated in said paragraph 4 of said petition are approximately correct as of the date of said petition; and, in respect of such of said securities as are not traded in on the securities markets, respondents are without knowledge or information sufficient to form a belief as to the truth of the values thereof alleged by petitioner.

2. Respondents admit the allegations contained in the paragraphs of the said petition marked 5 and 6.

3. Respondents deny knowledge or information, except as hereinafter alleged, sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the said petition marked 7 and 8.

4. Respondents admit the allegations contained in the paragraph of the said petition marked 9.

Further Answering the Said Petition Respondents Respectfully Allege:

5. Prior to the institution of these proceedings on March 31, 1933, J. P. Morgan & Co., a partnership engaged in the business of investment banking, made loans (in which its associates, Messrs. Kuhn, Loeb & Co. and Guaranty Trust Company of New York participated) to the Missouri Pacific evidenced by nine promissory notes of various dates, and bearing interest at the rate of 6% per annum. The participations of Messrs. Kuhn, Loeb & Co. and Guaranty Trust Company of New York in said notes amounted in each case to $1,462,500. The collateral, hereinafter described, securing the same was left in the possession of J. P. Morgan & Co. The participation in the said loan of Messrs. Kuhn, Loeb & Co. has been further participated.

The foregoing facts are set forth in the proof of claim herein, designated Proof of Claim No. 503, dated April 21, 1936, filed by J. P. Morgan & Co. on behalf of itself, Kuhn, Loeb & Co. and Guaranty Trust Company of New York and in Proof of Claim No. 524 filed herein by Kuhn, Loeb & Co. dated April 22, 1936 (Proof of Claim No. 503 at Vol. 8, Record p. 3703; Proof of Claim No. 524 at Vol. 9 Record p. 3855).

6. Thereafter, and in March, 1940, J. P. Morgan & Co. Incorporated, was incorporated under the Banking Law of the State of New York and is now a corporation, with publicly held stock, organized and existing under the laws of said State. On or about the 1st day of April, 1940, the notes held by J. P. Morgan & Co., as evidenced by said proof of claim No. 503 and said collateral were assigned to, and are now held by, J. P. Morgan & Co. Incorporated.

7. Respondents are the holders of undisputed claims against the Missouri Pacific in the principal sum of $5,850,000 bearing interest at the rate of six per cent per annum from January 1, 1933. No part of the said claims has been paid by Missouri Pacific, except that, by reason of the payment of dividends and interest on the securities hereinafter described, pledged as collateral for the said debt, the sum of $2,568,625. has been paid and applied on account of accrued interest. See Orders for payment of interest on First and Refunding Bonds, viz: Order 828, Vol. 14, Record p. 6589, Order 1917, Vol. 30 Record p. 15873, Order 2049 Vol. 32, Record pp. 16807, 16809, Order 2186 Vol. 34, Record p. 17855, Order 2370, Vol. 36, Record p. 19111, Order 2577, Vol. 40, Record p. 20975, Order 2789, Vol. 42, Record p. 22545 and Orders as to dividends on Texas and Pacific stock, viz: Order 2230, Vol. 34, Record p. 18069, Order 2423, Vol. 37 Record, p. 19361, Order 2605, Vol. 40, Record p. 21049, Order 2854, Vol. 43, Record p. 22929. (See also Plan, Sec. "T", Third Supplemental Order of Commission of October 9, 1944; Vol. 39, Record, pp. 20948, 20949, 20954 and App. "E" attached to Supplemental Report of Commission of July 4, 1944, id. p.

20879). The amount of the said claims with interest from January 1, 1933 to June 30, 1946, at six per cent per annum is as follows:

Aggregate Principal Amount of nine promissory notes of the Missouri Pacific now outstanding		$5,850,000.
Interest thereon at 6% to June 30, 1946	$4,738,500.	
Less payments received and applied to interest to date	2,568,625.	
Balance of interest unpaid	$2,169,875.	2,169,875.
Total due to June 30, 1946		$8,019,875.

8. For the security of the said indebtedness with the interest thereon the Missouri Pacific as set forth in said Proof of Claim No. 503 (Vol. 8, Record pp. 3703, 3705) has pledged with J. P. Morgan & Co., and respondent J. P. Morgan & Co. Incorporated now has possession of, the following collateral:

114,750 shares of common stock of Texas & Pacific Railway Company;

$7,750,000 principal amount of Missouri Pacific Railroad Company First and Refunding mortgage 5 per cent Gold Bonds Series "I".

On information and belief said securities had, as of May 1, 1946, and now have, approximate market values as follows:

114,750 shares Texas & Pacific Railway Company common stock at 51½ per share	$ 5,909,625.
$7,750,000 Missouri Pacific Railway Company First and Refunding Mortgage Bonds Series "I" at 95½	$ 7,401,250.
	$13,310,875.

9. On or about the 26th day of September 1934, Order No. 234 was entered herein tentatively classifying stockholders and creditors of the Debtor. (Vol. 4 Record p. 1659.) Said order created, among others, the following separate classes of creditors (id at Record p. 1662):

> "Class 24. Claims evidenced by Missouri Pacific Railroad Co. secured notes issued to Reconstruction Finance Corporation.
>
> Class 25. Claims evidenced by Missouri Pacific Railroad Co. secured notes issued to Railroad Credit Corporation.
>
> Class 26. Claims evidenced by Missouri Pacific Railroad Co. secured notes issued to J. P. Morgan & Co."

Motions for the modification of said tentative classifications were filed by the Trustee of the Missouri Pacific, by Reconstruction Finance Corporation and others, praying among other things, that the claims of the Reconstruction Finance Corporation, the Railroad Credit Corporation, and of respondents be classified in a single class. (Vol. 4 Record p. 1807; and id. p. 1823). Said petitions were referred to the Honorable Marion C. Early, Special Master, to hear and make recommendations regarding classification of creditors and the Report of the said Special Master recommended that each of the three creditors mentioned above be classified in a separate class. (Order of Reference, Vol. 4 Record p. 1835; Report 234-A, Vol. 6, Record p. 2633.)

10. Thereafter, upon exceptions to said Report of the Special Master (Vol. 6 Record pp. 2643, 2647), this Court by Supplemental Order 234-A of December 27, 1935, overruled the recommendations of the Special Master and directed that the claims of the Reconstruction Finance Corporation, Railroad Credit Corporation and of respondents be classified in a single class, designated as Class No. 17 (Opinion, Vol. 7 Record p. 3135 *et seq*; Supplemental Order, Vol. 7, Record p. 3145).

11. Thereafter, on August 7, 1936, upon appeal taken on behalf of respondents the said Supplemental Order 234-A was affirmed by the Circuit Court of Appeals for the Eighth Circuit. (Opinion, Vol. 10 Record p. 4451).

12. Thereafter, by motion No. 1763, (Vol. 28, Record p. 14381) the Trustee of the Missouri Pacific moved this Court for a reclassification of stockholders and creditors. In its petition on said motion the Trustee classed, as Class No. 10, the secured notes held by the Reconstruction Finance Corporation, Railroad Credit Corporation and J. P. Morgan & Co., Kuhn, Loeb & Co. and associates. Thereafter, and in view of the decision of the Circuit Court of Appeals above mentioned, this Court made its Order 1763-A of April 11, 1943 classifying the said creditors as follows (Vol. 28 Record pp. 14483, 14485):

> "Class Ten: Secured notes held by (a) Reconstruction Finance Corporation, (b) Railroad Credit Corporation, and (c) J. P. Morgan & Co., Kuhn, Loeb & Co., and their associates."

13. In view of the value of the collateral pledged to secure them, the plan of reorganization approved by the Interstate Commerce Commission for the Debtor on January 10, 1940 provided similar treatment for the claims of Reconstruction Finance Corporation and of respondents. (Report, Vol. 24, Record, pp. 12154, 12192) The said Plan was approved by this Court in its Opinion No. 1494 of June 20, 1941 (Vol. 29, p. 14959) and by Findings, Conclusions and Decree No. 1494 of July 12, 1941 (Vol. 29, Record, p. 15175). Thereafter, appeals having been taken from said decree to the Circuit Court of Appeals for the Eighth Circuit, and circumstances relating to the said Plan and the Missouri Pacific having, in the meantime, changed, the said plan was remanded to this Court for further reference in its discretion to the Interstate Commerce Commission, by mandate of said Circuit Court, No. 2313, dated May 18, 1943, entered upon agreement of appellants and appellees on the appeals. (Mandate 2313, Vol. 35, Record p. 18591).

14. In the Supplemental Report of the Interstate Commerce Commission of July 4, 1944, approving a revised compromise plan of reorganization for the Missouri Pacific, the Commission again provided for a similar treatment of the claim of Reconstruction Finance Corporation and that of respondents (Report Vol. 39, Record pp. 20723, 20850). In view of the nature and value of collateral pledged to secure the said claims, the approved plan allots to the Reconstruction Finance Corporation and to respondents, cash in an amount sufficient to pay the interest due upon such claims (at the rate of six per cent per annum to the date of filing of the debtor's petition in this proceeding and at four per cent per annum to the effective date of the plan) and, for the principal of said claims, said plan allots new First Mortgage Bonds (Vol. 39, Record p. 20846, 20850). The latter are to be secured by a first lien upon the entire Missouri Pacific system. Reconstruction Finance Corporation and respondents have an option to take Series A First Mortgage Bonds maturing in 15 years from the date of the plan and bearing interest at the rate of 3-½% per annum or Series B Bonds maturing 25 years from said date and bearing interest at 3-¾% per annum. In making such determination the Commission finds, Supplemental Report; (Vol. 39 Record, p. 20850):

"J. P. Morgan & Company and affiliated banks are, from the nature and value of the collateral security for their loans, entitled to treatment at least equivalent to that accorded the Finance Corporation. Although the banks have signified that they would accept the terms of the compromise plan, we are of the opinion and find that, to avoid unfair discrimination in view of the above improvement in the treatment accorded the Finance Corporation, these bank creditors should receive an increase of $321,510 in their cash allotment, the resulting total being $1,480,382.

These loans from the Finance Corporation and the banks were made to aid the debtor in emergencies, the proceeds were used in part at least, to permit

interest payments to continue to be made on the obligations of the debtors, and the securities for the loans are of a different nature from the mortgage liens of the senior creditors of the Missouri Pacific, New Orleans, and International. In our opinion these increases in cash payments to the Finance Corporation and J. P. Morgan & Company and associates, can be met out of excess cash in the Missouri Pacific treasury not required for other purposes. We find that the above allocations of cash and new securities to these two creditors represent the fair equivalent of the value of their claims, will not discriminate unfairly against the senior mortgage creditors and should be approved."

15. Under the compromise offered in the said plan, interest is computed at 6% upon the claim of respondents to March 31, 1933, the date of institution of this proceeding and at 4% thereafter to January 1, 1948, the effective date of the plan. Such reduced interest, less the payments made upon pledged collateral and applied to interest to said effective date amounts to $1,480,382. Interest at 6% upon said claim to said effective date less the said payments amounts to $2,622,174. The compromise in the plan thus provides a saving in interest amounting to $1,141,792.

16. The said plan of reorganization was approved in the opinion of this Court No. 2606 dated December 21, 1945 as amended (Vol. 43 Record p. 23031) and by Order No. 2604 B of January 22, 1946 (Vol. 43 Record p. 23203). Respondents are informed and believe that the said plan of reorganization has not been submitted to any creditors for their acceptance or rejection, and has not yet been confirmed.

17. In the event that said plan shall not become finally binding on all parties in interest, purchase of the claim of respondents on the same basis of reduction in interest as that offered to Reconstruction Finance Corporation, will provide a saving to the estate amounting to $1,550,250 computed thus:

Interest on respondents' claim at 6% to June 30, 1946	$4,937,500	
Less payments received and applied to interest to date	2,568,625	
Balance of interest at 6% unpaid	2,169,875	
Interest on respondents' claim at 6% to March 31, 1933 and at 4% thereafter to June 30, 1946.	3,188,250	
Less payments received and applied to interest to date	2,568,625	
Balance of interest on settlement and compromise of claim	$ 619,625	
Balance of interest at 6% unpaid		$2,169,875
Balance of interest on settlement and compromise		619,625
Interest saved through compromise		$1,550,250

Settlement and compromise of the claim of respondents will also permit the acquisition by the estate of the said collateral having a market value of $13,310,875.

18. If the plan is accepted and confirmed, and the claim of respondents is purchased upon the same basis as that offered Reconstruction Finance Corporation in said petition, it will be possible to eliminate the $5,850,000 in Series A or B First Mortgage Bonds allocable to the claim of respondents thus eliminating said Bonds as a fixed charge and providing a saving in fixed charges payable by the reorganized Missouri Pacific amounting, if Series B First Mortgage Bonds with interest at the rate of 3-¾% are chosen by respondents, of approximately $4,350,645 over the remaining life of the bonds.

19. On information and belief, respondent alleges that the petitioner's Report of Assets and Liabilities of the bankruptcy estate filed on March 20, 1946 discloses that petitioner had on hand, as of January 31, 1946, cash and

other current assets amounting to $127,517,723.50, and that on said date current liabilities were $53,852,876.98 (File No. 2904 at Vol. 44, Record, p. 23391). Respondents believe and, therefore, allege that the ratio of petitioner's current assets to his current liabilities is now at least as favorable to petitioner as it was on January 31, 1946.

20. Respondents believe and therefore allege, that there is sufficient cash and other current funds in possession of said estate to purchase the claim of Reconstruction Finance Corporation and the collateral pledged to secure it upon the terms acceptable to Reconstruction Finance Corporation, as stated in said petition, and to purchase the claim of respondents on the same terms as those proposed in said petition for settlement of the claim of Reconstruction Finance Corporation, and to purchase the claim of Railroad Credit Corporation on the terms set forth in Petitioner's petition filed concurrently in these proceedings dealing with the settlement of Railroad Credit Corporation's claim against Missouri Pacific. Respondents believe and therefore allege that the acquisition of the claim of respondents by purchase of said claim and the collateral pledged to secure it will be advantageous to the estate.

21. Respondents beg leave to incorporate herein each of the orders, petitions and other documents in this proceeding referred to in this answer, and to make them a part of this answer as if they were set forth herein at length.

Wherefore, respondents respectfully pray:

(1) That the Petitioner, as Trustee of the property of Missouri Pacific Railroad Company, be instructed not only to purchase all notes of Missouri Pacific Railroad Company held by Reconstruction Finance Corporation, together with the collateral securing the same and all the notes of the Missouri Pacific Railroad Company held by Railroad Credit Corporation and the collateral securing the same, upon the terms proposed by petitioner in his petition and the one concurrently filed with respect to settlement of the claims of Railroad Credit Corporation,

but that he is also instructed to purchase, concurrently, the notes of the Missouri Pacific Railroad Company held by respondents, together with the collateral securing them upon such terms and conditions as may be fair and equitable to the holders of said notes without discrimination against the latter and without preference in favor of the holders of other notes classified in the same class in these proceedings; and

(2) For such other and further relief as to this Court may seem just and proper in the premises.

J. P. MORGAN & CO. INCORPORATED,
By ETHAN A. H. SHEPLEY,
Its Attorney.

HARRY W. KROEGER,
ETHAN A. H. SHEPLEY,
EDWIN S. S. SUNDERLAND,
Solicitors for J. P. Morgan & Co. Incorporated.

SHEPLEY, KROEGER, FISSE & INGAMELLS,
319 North Fourth Street,
St. Louis, Missouri,

DAVIS, POLK, WARDWELL, SUNDERLAND & KIENDL,
15 Broad Street,
New York 5, New York,
Of Counsel for J. P. Morgan & Co. Incorporated.

United States of America,
State of Missouri
Eastern Judicial District of Missouri,
City of St. Louis. } ss.

Ethan A. H. Shepley, being duly sworn, deposes and says that he is one of counsel for J. P. Morgan & Co. Incorporated, one of the respondents above named and that he has read the foregoing answer and that the facts therein stated are true as he is informed and verily believes and that the reason why this verification is made by deponent and not by J. P. Morgan & Co., Incorporated

is because J. P. Morgan & Co., Incorporated is a corporation and because neither the said corporation nor any officer thereof is within the said State or District.

ETHAN A. H. SHEPLEY.

Subscribed and sworn to before me this 8th day of May, 1946.

MIRIAM H. DEUBEL,
Notary Public.

(Seal)

My commission expires July 25, 1949.

(Answer of Reconstruction Finance Corporation to Petition No. 2928 of Trustee for Advice and Directions, etc., and Request for Affirmative Relief.)

(Filed May 9, 1946)

Comes now Reconstruction Finance Corporation (hereinafter referred to as RFC) and for answer to petition No. 2928, filed herein by the Trustee of the Debtor and verified April 24, 1946, respectfully shows:

1. The RFC admits the allegations of Paragraphs 1, 2, 3, and 6 of said petition;

2. The RFC admits the allegations of Paragraphs 4 and 8 of said petition, except for the facts (a) that there is an omission of $20,000.00 of cash collateral from the list of the collateral set forth in said Paragraph 4, and (b) that RFC believes that the value of the collateral securing its loans to the Debtor is approximately $49,650,000.00;

3. The RFC admits the allegations of Paragraphs 5 and 8 of said petition, with the exception that the figure as to the amount of accrued and unpaid interest at June 30, 1946, as stated in the petition, is $1000.00 too low and with the understanding that the sum of $10,454,119.00 the amount of interest alleged to have been heretofore paid, includes the sum of $85,500.00 ordered paid by this Court

on the 26th day of July, 1945, which said order was appealed to the United States Circuit Court of Appeals, where said order was affirmed, and the payment of said sum of $85,500.00, if made, has not, to the best of our knowledge, information and belief, as yet been received or credited on the books of the RFC.

4. The RFC is without sufficient information or knowledge with respect to Paragraphs 7 and 9 of said petition and neither admits nor denies the allegations of said paragraphs.

In addition the RFC, as and for a prayer for affirmative relief, respectfully shows that payment of the RFC's claim on the basis referred to in paragraph 1 of the prayer of said petition will (a) simplify the corporate structure of the Debtor; (b) facilitate the reorganization of the Debtor; (c) be fair and equitable; and (d) be in accordance with the law of the land.

Wherefore, the RFC prays that this Court enter an Order authorizing and directing the Trustee of the Debtor to compromise, settle and pay the claim of the RFC against Missouri Pacific Railroad Company, Debtor, represented by its loans in the aggregate principal amount of $23,134,800 to said Debtor, by paying to RFC, within ninety (90) days from April 15, 1946 an amount equal to the aggregate principal amount of said loans, plus interest accrued on the notes evidencing said loans at the rate expressed in said notes (6% per annum) to the date of bankruptcy (April 1, 1933) and at the rate of 4% per annum from the date of bankruptcy to the date of payment of said claim, less the total amount of payments heretofore credited by the RFC to interest on said loans, and for such further orders as to the Court may seem meet and proper.

RECONSTRUCTION FINANCE CORPORATION,
By W. MEADE FLETCHER, JR.,
Chief Railroad Counsel.

ROBERT D. EVANS.

Of Counsel
GREEN, HENRY & EVANS.

United States of America
Eastern Judicial District of Missouri
City of St. Louis

W. Meade Fletcher, Jr., being first duly sworn, deposes and states that he has read the foregoing answer and that the facts therein are true to the best of his knowledge, information and belief.

W. MEADE FLETCHER, JR.

Subscribed and sworn to before me this 8th day of May, 1946. My commission expires June 14, 1947.

M. HAGERMAN,
(Seal) Notary Public.

Answer of Missouri Pacific Railroad Company to Petition of Guy A. Thompson, Trustee, with respect to payment of debt due the Reconstruction Finance Corporation by it.

(Filed May 9, 1946.)

Comes now Missouri Pacific Railroad Company, Debtor in the above entitled proceedings and for its answer to petition No. 2928 of Guy A. Thompson, Trustee, respectfully shows to the Court that:

1. It admits allegations contained in paragraphs numbered 4, 5, 6, 8 and 9 of said petition.

2. It believes to be true and therefore upon information and belief, admits the allegations of fact contained in paragraphs numbered 2 and 3 of said petition.

3. Being without sufficient knowledge or information to form a belief it neither admits nor denies the allegations contained in paragraphs numbered 1 and 7 of said petition.

4. The compromise settlement and payment of this claim would and will be to the best interest of and will benefit the Trust Estate and its Creditors and will be in the public interest.

5. The Trustee has recently been authorized to make very substantial wage increases to his employees, retroactive to January 1st, 1946; the level of revenue paying traffic over the railroad of the Trust Estate has been and is sharply down. The reduction in interest charges and expenses which would result from the settlement and payment, if made, would to that extent protect the net earnings of the Trust Estate.

6. This claim has heretofore been classified by this Court as a specially preferred claim in its opinion In Re Missouri Pacific R. R. Co., 50 Fed. Sup. 936, lc 942.

7. If precedents are necessary to effectuate the proposed settlement and payment of this claim they are found in this Court's Orders Nos. 2374 to 2378, inclusive, duly entered in these proceedings on September 18, 1943 and in Order No. 2794 duly entered in these proceedings July 26th, 1945.

8. Among the powers vested in this Trustee under the applicable Bankruptcy Statutes and the General Orders in Bankruptcy, particularly General Order No. 28, is the power, when it is for the benefit of the estate and is approved by the Court, to redeem and discharge any mortgage, pledge, deposit, or lien upon any property, real or personal, of the estate. The petition states facts showing the compromise payment to be in the interest of the estate. It is within the Court's discretion to order the Trustee to take this action beneficial to the estate. The loan, as the petition shows, is highly collateralized. To compromise it would not constitute an undue preference. In order to constitute an undue preference there must be a payment, the effect of which will enable a creditor to obtain a greater percentage of his debt than some other creditor of the same or of a higher class.

Wherefore Missouri Pacific Railroad Company prays that this Court authorize and direct Guy A. Thompson, as Trustee, to compromise, settle and pay this claim of Reconstruction Finance Corporation upon the terms stated in said Petition; to cancel the notes evidencing the claim and debt and to repossess and retain all the collateral held by

Reconstruction Finance Corporation as security for said notes, claim and debt.

Respectfully submitted,

MISSOURI PACIFIC RAILROAD COMPANY,
By MARION B. PIERCE,
General Counsel and Director.

United States of America,
Eastern Division,
Eastern District of Missouri } ss.
County of Jackson
State of Missouri

Marion B. Pierce, to me known, being first duly sworn, deposes and states that he is an officer, to-wit: General Counsel and a Director, of Missouri Pacific Railroad Company, that he has read the foregoing answer, and that the facts stated therein are true, as he verily believes.

MARION B. PIERCE.

Subscribed and Sworn to before me this 7th day of May, 1946.

My commission expires August 23, 1949.

VIRGINIA BAILEY,
(Seal) Notary Public.

MARION B. PIERCE,
44 Whitehall Street,
New York, N. Y.,
OLIVER & OLIVER,
Himmelberger-Harrison Bldg.,
Cape Girardeau, Mo.,
Its Attorneys.

Answer of Protective Committee for Holders of Common Stock of Missouri Pacific Railroad Company, Debtor, to Petition of Trustee for Advice and Directions With Respect to the Compromise and Settlement of the Claim of Reconstruction Finance Corporation Against Missouri Pacific Railroad Company, Debtor.

(Filed May 9, 1946.)

Now come Charles H. Thornton and A. J. Sevin, Constituting a Protective Committee for the Holders of Common Stock of the Missouri Pacific Railroad Company, Debtor, and present this their answer to the petition of Guy A. Thompson, Trustee, for advice and directions with respect to the compromise and settlement of the claim of Reconstruction Finance Corporation against Missouri Pacific Railroad Company, Debtor, being Petition No. 2928, stating as follows:

1. Said Protective Committee has no knowledge as to the allegations in paragraphs 1, 2, and 3 of said petition and therefore neither admits nor denies said allegations.

2. Said Protective Committee admits the allegations in paragraphs 4, 5, 6, 7, 8, and 9 of said petition.

3. It is to the best interests of the creditors of the Debtor's estate, of the Debtor's estate, and of the Debtor's stockholders, and in the public interest that the claim of the Reconstruction Finance Corporation be compromised, settled and paid upon the terms proposed by said Reconstruction Finance Corporation, thus saving the further payment of interest thereon.

Wherefore, said Protective Committee prays that an order may be entered authorizing and directing Guy A. Thompson, Trustee of Missouri Pacific Railroad Company, Debtor, to compromise, settle, and pay the claim of the Reconstruction Finance Corporation by paying to it within ninety days from April 15, 1946, the principal amount of said loans, plus interest accrued on the notes evidencing said loans at the rate expressed in said notes (6%) to the

date of bankruptcy (April 1, 1933), and at the rate of 4% per annum from said date of bankruptcy to the date of settlement, less the amount of payments made to the Reconstruction Finance Corporation representing income from collateral held by it as security for its said claim, to cancel the notes evidencing said debt and to receive and hold subject to the further order of this Court all collateral held by said Reconstruction Finance Corporation as security therefor, and for such other and further relief in the premises as may to the Court seem necessary.

CHARLES H. THORNTON and
A. J. SEVIN,
Constituting a Protective Committee for the Holders of Common Stock of Missouri Pacific Railroad Company,

By LUTHER M. WALTER,
Attorney for Said Committee.

Order

With Respect to Compromise Purchase of Claim of Reconstruction Finance Corporation Against Missouri Pacific Railroad Company, Debtor.

(Order No. 2928.)

(Filed May 29, 1946.)

This matter having come on to be heard on the 9th day of May, 1946, upon the Petition of the Trustee of Missouri Pacific Railroad Company, Debtor, No. 2928, requesting the advice and directions of the Court with respect to the compromise and settlement of the claim of the Reconstruction Finance Corporation (hereinafter called "R. F. C."), against Missouri Pacific Railroad Company, Debtor (hereinafter called "Debtor Company"), and the Court having heard and considered such Petition, the

Answers filed by various parties in interest, the evidence adduced in regard thereto and the statements and arguments of Counsel for Trustee and interested parties, and it appearing to the Court that due notice of the time and place of the hearing on said Petition has been given as directed by Assignment of Hearing No. 2928, duly entered herein on April 25, 1946, the Court Finds:

1. That the cash resources of the Trust Estate are amply sufficient to justify and safely permit the proposed compromise and settlement of the claim of the R. F. C.

2. That the fair market value of the collateral pledged as security for said claim is substantially in excess of the amount proposed to be paid R. F. C. in compromise and settlement of its claim.

3. That the compromise and settlement of said claim on the terms offered by the R. F. C. as set forth in Trustee's said Petition will be in the public interest and in the best interest of said trust estate.

4. That such compromise and settlement of the claim of the R. F. C. will also be in the best interest of the Missouri Pacific First and Refunding Mortgage creditors, and all other mortgage creditors claiming a lien on the funds of the Trust Estate to be used in effecting said compromise and settlement.

5. That such compromise and settlement of said claim will also be to the best interest of the Secured Bank creditors.

Wherefore, It Is Ordered:

(1) That Guy A. Thompson, as Trustee, Missouri Pacific Railroad Company, Debtor, be and he hereby is authorized and directed to purchase the claim of the R. F. C. against said Debtor Company, or its estate, namely, the six notes of said Debtor Company in the principal sum of $23,134,800, and the collateral presently securing the same, and to pay therefor, from any funds now or hereafter com-

ing into his hands as Trustee of said Debtor Company, the full principal of said notes, together with interest thereon from their respective dates to April 1, 1933, at the contract rate of 6% per annum, and with interest from April 1, 1933, to the date of consummation of said purchase at the rate of 4% per annum, less the sum of $10,454,119 heretofore received and applied by R. F. C. on said claim and less any amounts that shall have been received by R. F. C. on account of its said collateral after the date of this Order and prior to the consummation of such purchase, such sum to be paid in cash by the Trustee to R. F. C. against delivery by R. F. C. of said notes and said collateral.

The Court expressly reserves the right, with or without notice to the parties in interest to these proceedings, to hereafter direct that said notes be cancelled and marked paid, should the Court hereafter determine that such action will be to the best interest of said Trust Estate.

(2) That the notes and collateral so acquired from R. F. C. shall be held by Trustee for the benefit of the holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds outstanding, and for the benefit of any other creditors of said Debtor Company, to the extent of their respective interests, if any, in the cash used in the purchase of said notes and collateral as the same may appear or may be hereafter determined by the Court or any Reorganization Plan, such holders or other creditors being hereby subrogated to the interest, rights, liens, and benefits of the R. F. C. under its said claim and in and to such notes and the collateral pledged as security therefor, to the end that their respective rights and interests may be fully protected in any marshaling of the assets of the Debtor Company or under the terms of any Plan of Reorganization that may be finally confirmed in these proceedings; and the Court hereby expressly reserves jurisdiction to make from time to time such further order or orders as may be deemed necessary or appropriate to protect and enforce the rights and equities of said bondholders and such other creditors in the premises.

(3) Debtor Trustee shall report to the Court any action taken under and pursuant to this Order.

(4) If the purchase herein authorized shall not be consummated neither the R. F. C. nor any bondholder nor any other creditor to these proceedings shall be prejudiced by this Order or said Petition of the Trustee, or by any recital or provision in either, in respect of any issue arising under said claim of R. F. C.

GEO. H. MOORE,
Judge,
United States District Court.

Dated: May 29, 1946.

Petition

Of Trustee for Advice and Directions With Respect to Payment of Debt Due The Railroad Credit Corporation by Missouri Pacific Railroad Company, Debtor.

(Petition No. 2929.)

(Filed April 25, 1946.)

Comes now Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, and represents to the Court:

1. That as more fully appears from Proof of Claim No. 525 (Rec. p. 3867), said Debtor Railroad entered into a contract, effective January 1, 1932, with The Railroad Credit Corporation (hereinafter called R.C.C.) and certain other carriers by rail, by which it became a participant in the Marshalling and Distributing Plan, a copy of which is attached to the original Proof of Claim, Special Master's No. 2153.

2. Thereafter, Missouri Pacific Railroad Company borrowed certain monies from the R.C.C. evidenced by three notes, to-wit:

One note, dated August 30, 1932, for the principal sum of $3,000,000.00;

One note, dated October 31, 1932, for the principal sum of $600,000.00;

One note, dated November 30, 1932, for the principal sum of $200,000.00.

The following securities are pledged as security for the payment of said notes, to-wit:

	Par Value	Book Value
Capital Stock:		
Arkansas & Memphis Ry. Br. & Term. Co. Pfd.	$ 550,000	$ 550,000
Chester & Mt. Vernon R. R. Co. Common	100,000	196,068
Chester & Mt. Vernon R. R. Co. Preferred	150,000	150,000
Denver & Rio Grande Western R. R. Co. Common	No Par	10,291,524
Denver & Rio Grande Western R. R. Co. Preferred	603,300	271,582
Missouri-Illinois Railroad Co.	1,147,100	1,279,346
New Orleans, Texas & Mexico Ry. Co.	1,221,300	1,740,063
Texas-Pacific Mo. Pac. Terminal R. R. of New Orleans	999,800	953,119
Western Coal & Mining Co.	1,000,000	553,008
Kans.-Okla. & Gulf Ry. Co. Series A Pfd.	77,100	77,003
Kans.-Okla. & Gulf Ry. Co. Series B Pfd.	600	506
Kans.-Okla. & Gulf Ry. Co. Series C Pfd.	19,700	19,646
Bonds:		
Chester & Mt. Vernon R. R. Co. 1st Mtge.	250,000	244,500
Notes:		
Rock Island, Ark. & Louisiana R. R. Co. 4%	453,800	453,800
Totals	$ 6,673,300	$16,779,948

Trustee is advised and therefore states that the present value of the securities listed above is approximately $5,000,000.00; and that said notes are further secured by Debtor's distributive share in the fund established under the aforesaid Marshalling and Distrib ting Plan and by a pledge of the equity of said Debtor Company in and to any and all securities deposited as security with the Reconstruction Finance Corporation, all as more fully appears from said Proof of Claim No. 525.

3. That from time to time since their execution, substantial sums have been credited against the principal and interest accruing on said notes representing income from the collateral securing same, including said Debtor Company's share in certain distributions made under the aforesaid Marshalling and Distributing Plan, and at June 30, 1946, there will be due on said notes, principal and interest amounting to $1,934,507.00.

4. Petitioner further states that the Interstate Commerce Commission by its Order of October 9, 1944, duly filed in these proceedings on October 13, 1944 (Rec. p. 20892), proposed a Modified Plan of Reorganization for Debtor Railroads herein, which was approved by an Order of this Court duly entered January 22, 1946; that in its Report of July 4, 1944, which has been duly filed in these proceedings (Rec. p. 20731), in referring to the claim of The Railroad Credit Corporation, the Commission, among other things, stated:

> "In our opinion, the security for the loans is sufficient to warrant their payment in full in cash or its equivalent * * *".

Under said proposed Plan of Reorganization, the R.C.C. is given full treatment on its claim for principal and interest, to-wit: Approximately $2,103.00 in cash, and the balance, at its election, in either Series "A" or Series "B" First Mortgage Bonds. Paragraph A of said Modified Plan of Reorganization, as set forth in said Order of the Commission (Rec. p. 20894), provides, among other things, that "cash in the treasuries of the debtors available for distribution may be distributed to creditors from time to time, pending the consummation of the plan, as the court may from time to time direct." In its Third Supplemental Report, dated October 9, 1944, the Commission discussed the possibility of further cash distributions at the direction of the Court, and, among other things, said:

> "In determining cash distributions as well as fixing total capitalization as stated in our report, we recognized that the cash position of the debtor's trustee would vary in the future and that 'surplus cash'

might either exceed or fall short of our estimates. We believed and are still of the opinion, that the court, in the light of current conditions, should determine any amounts of cash available and not authorized by the plan, which might be so distributed, within the framework of the plan, from time to time up to the date of consummation of the plan. In fixing the amount of capitalization and in approving the provision of the plan authorizing cash distributions upon order of the court prior to consummation, we recognized the possibility that as of the date of consummation the system capitalization might be somewhat less than the $560,000,000 approved by us. We contemplated, however, insuring that amount as the maximum. Even if the collateral-trust notes are not issued, an increase in equipment obligations resulting from a future demand for, and availability of, additional equipment prior to the date of consummation of the plan may result in total capitalization as of that time being about the same as the maximum fixed by us." (Rec. p. 20687).

5. Petitioner further states that, in his opinion, the available funds of said Debtor Estate are amply sufficient to meet the cash requirements of said proposed Plan of Reorganization, and in addition, to retire at this time the principal and interest due the R.C.C. on the notes of the aforesaid Debtor, that said notes are currently bearing interest at the rate of One per cent (1%) per annum and that credits are being made upon said notes currently from time to time, representing income from collateral.

Petitioner is advised and therefore states that the R.C.C. has liquidated the major portion of its business and that payment of the notes of said Debtor will enable said Corporation to close its operations at an early date.

Petitioner is further of the opinion that said indebtedness may be retired, within the framework of the Plan and under the provisions thereof, and that such retirement will result in an annual interest saving of approximately $19,345.00.

6. That on June 7, 1933, Trustees of the Missouri Pacific Railroad Company First and Refunding Mortgage filed their Petition No. 44 (Rec. p. 269), in these proceedings, asserting the claim of the bonds secured by said Mortgage against said trust estate and praying, among other things, that all tolls, incomes, rents, revenues, issues and profits of the mortgaged property be impounded, segregated and sequestered for the benefit of said petitioners, as Trustees, and of the holders of said First and Refunding Bonds; that on April 24, 1936, the Corporate Trustee under the Missouri Pacific Railroad Company General Mortgage filed its Proof of Claim No. 504 (Rec. p. 3707), in behalf of the bonds secured by said Mortgage which is a lien on all security pledged under said First and Refunding Mortgage, subject only to the prior lien thereon of the First and Refunding Mortgage, and which is in substantially the same terms and form as said First and Refunding Mortgage; that substantially all of the funds now held by Trustee in behalf of said trust estate have come from the operation of the railroad properties which are subject to the liens of the aforementioned Mortgages; that if and to the extent that the terms of said Mortgages and the claims filed by said Mortgage Trustees herein create and establish liens upon all or any part of the funds proposed to be used in said payment of the claim of the R.C.C., said mortgage creditors may be entitled to be subrogated to the extent of the funds so used, to any rights and liens held by the R.C.C. in said pledged collateral.

Wherefore, the premises considered, Trustee respectfully prays that an Order be duly entered herein:

(1) Advising and directing Trustee whether he shall pay in full and final settlement of the said claim of the R.C.C. the full unpaid principal thereof with accrued interest to the date of payment, amounting at June 30, 1946, to $1,934,507.00.

(2) If the Court shall advise and direct Trustee to make such payment, that Trustee be authorized upon making said payment to cancel the notes evidencing said debt and to receive and hold all collateral held by the R.C.C. as

security therefor, subject to such lien, if any, as the holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds and the holders of Missouri Pacific General Mortgage Bonds may have or be entitled to by reason of the lien, if any, which they may have upon the cash of the trust estate used to retire said indebtedness.

(3) And for such further or other authority or direction as to the Court may seem meet or proper in the premises.

GUY A. THOMPSON,
Trustee.

RUSSELL L. DEARMONT,
Counsel For Trustee.

United States of America
Eastern Judicial District of Missouri } ss.
City of St. Louis

Guy A. Thompson, being first duly sworn, deposes and states that he has read the foregoing Petition, and that the facts stated therein are true, as he verily believes.

GUY A. THOMPSON.

Subscribed and Sworn to before me this 24th day of April, 1946.

My Commission expires March 8, 1950.

HARRIET COX,
Notary Public.

(Seal)

Order With Respect to Retirement of Debt Due The Railroad Credit Corporation by Missouri Pacific Railroad Company, Debtor.

(Order No. 2929.)

(Filed May 29, 1946.)

This matter having come on to be heard on the 9th day of May, 1946, upon the Petition of the Trustee of Missouri Pacific Railroad Company, Debtor, No. 2929, requesting the advice and directions of the Court with respect to the retirement of the claim of The Railroad Credit Corporation (hereinafter called "R. C. C."), against Missouri Pacific Railroad Company, Debtor (hereinafter called "Debtor Company"), and the Court having heard and considered such Petition, the Answers filed by various parties in interest, the evidence adduced in regard thereto and the statements and arguments of Counsel for Trustee and interested parties, and it appearing to the Court that due notice of the time and place of the hearing on said Petition has been given as directed by Assignment of Hearing No. 2929, duly entered herein on April 25, 1946, the Court Finds:

1. That the cash resources of the Trust Estate are amply sufficient to justify and safely permit the proposed retirement of the claim of the R. C. C.

2. That the fair market value of the collateral pledged as security for said claim is substantially in excess of the amount proposed to be paid R. C. C. in retirement of its claim.

3. That the retirement of said claim on the terms set forth in Trustee's said Petition will be in the public interest and in the best interest of said Trust Estate.

4. That the retirement of such claim of the R. C. C. will also be in the best interest of the Missouri Pacific First and Refunding Mortgage creditors, and all other mort-

gage creditors claiming a lien on the funds of the Trust Estate to be used in the retirement of said claim.

5. That the retirement of said claim will also be to the best interest of the Secured Bank creditors.

Wherefore, It Is Ordered:

(1) That Guy A. Thompson, as Trustee, Missouri Pacific Railroad Company, Debtor, be and he hereby is authorized and directed to purchase the claim of the R. C. C. against said Debtor Company, or its estate, namely, the three notes of said Debtor Company for the total original principal sum of $3,800,000 and the collateral presently securing the same, and to pay therefor, from any funds now or hereafter coming into his hands as Trustee of said Debtor Company, the balance due on the principal of said notes amounting to $1,929,629, together with interest thereon amounting at June 30, 1946, to $4,878.00, and with interest on the unpaid principal amount of said notes from June 30, 1946, to the date of consummation of said purchase at the rate of 1% per annum, less any amounts that shall have been received by R. C. C. on account of its said collateral after the date of this Order and prior to the consummation of such purchase, such sum to be paid in cash by the Trustee to R. C. C. against delivery by R. C. C. of said notes and said collateral.

The Court expressly reserves the right, with or without notice to the parties in interest to these proceedings, to hereafter direct that said notes be cancelled and marked paid, should the Court hereafter determine that such action will be to the best interest of said Trust Estate.

(2) That the notes and collateral so acquired from R. C. C. shall be held by Trustee for the benefit of the holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds outstanding, and for the benefit of any other creditors of said Debtor Company, to the extent of their respective interests, if any, in the cash used in the purchase of said notes and collateral as the

same may appear or may be hereafter determined by the Court or any Reorganization Plan, such holders or other creditors being hereby subrogated to the interest, rights, liens, and benefits of the R. C. C. under its said claim and in and to such notes and the collateral pledged as security therefor, to the end that their respective rights and interests may be fully protected in any marshaling of the assets of the Debtor Company or under the terms of any Plan of Reorganization that may be finally confirmed in these proceedings; and the Court hereby expressly reserves jurisdiction to make from time to time such further order or orders as may be deemed necessary or appropriate to protect and enforce the rights and equities of said bondholders and such other creditors in the premises.

(3) Debtor Trustee shall report to the Court any action taken under and pursuant to this Order.

(4) If the purchase herein authorized shall not be consummated neither the R. C. C. nor any bondholder nor any other creditor to these proceedings shall be prejudiced by this Order or said Petition of the Trustee, or by any recital or provision in either, in respect of any issue arising under said claim of R. C. C.

GEO. H. MOORE,
Judge, United States District Court.

Dated: May 29, 1946.

Transcript of Evidence and Proceedings on Hearing of Petition No. 2928 of Trustee for Advice and Directions With Respect to the Compromise and Settlement of the Claim of Reconstruction Finance Corporation Against Missouri Pacific Railroad Company, Debtor; Petition No. 2929 of Trustee for Advice and Directions With Respect to Payment of Debt Due the Railroad Credit Corporation by Missouri Pacific Railroad Company, Debtor, and Petition No. 2930 of Trustee for Advice and Directions With Respect to Payment of Debt Due the Railroad Credit Corporation by International-Great Northern Railroad Company, Debtor.

District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri

In the Matter of	In Proceedings for the Reorganization of a Railroad. No. 6935.
Missouri Pacific Railroad Company, Debtor.	

Be It Remembered: That on May 9, 1946, during the March Term, 1946, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, there came on to be heard before the Honorable George H. Moore, Petition No. 2928 of Trustee for Advice and Directions with respect to the Compromise and Settlement of the Claim of Reconstruction Finance Corporation against Missouri Pacific Railroad Company, Debtor; Petition No. 2929 of Trustee for Advice and Directions with respect to Payment of Debt due The Railroad Credit Corporation by Missouri Pacific Railroad Company, Debtor, and Petition No. 2930 of Trustee for Advice and Directions with respect to Payment of Debt due The Rail-

road Credit Corporation by International-Great Northern Railroad Company, Debtor, whereupon the following proceedings were had:

Appearances

Mr. Russell L. Dearmont and
Mr. Thomas T. Bailey,
Attorneys for Trustee.

Mr. Marion B. Pierce,
Attorney for Debtor.

Mr. Jacob Chasnoff,
Attorney for Group of Institutional Investors, First and Refunding Mortgage Bonds.

Davis, Polk, Wardwell, Sunderland & Kiendl,
by Mr. Edwin S. S. Sunderland,
and

Shepley, Kroeger, Fisse & Ingamells,
by Mr. Ethan A. H. Shepley,
Attorneys for J. P. Morgan & Company, Incorporated, and associated banks.

Shepley, Kroeger, Fisse & Ingamells,
by Mr. William G. Pettus, Jr.,
Attorney for City Bank Farmers Trust Company, Trustee, International-Great Northern Railroad Company First Mortgage.

Mr. W. Meade Fletcher and
Mr. Robert David Evans,
Attorneys for Reconstruction Finance Corporation.

Mr. Thomas F. McDonald,
Attorney for The Railroad Credit Corporation.

Mr. Edwin J. Bean,
Attorney for Convertible Bondholders' Group.

Mr. Everett Paul Griffin,
Mr. Edward F. Calladay and
Mr. Kenneth McEwen,
Attorneys for Protective Committee First Mortgage Bonds International-Great Northern.

Mr. Robert H. McRoberts and
Mr. Thomas S. McPheeters, Jr.,
Attorneys for St. Louis Union Trust Company, Trustee for Committee for Protection of Little Rock, Hot Springs and Western Bonds.

Mr. William H. Biggs,
Attorney for Andrew W. Comstock.

Mr. Emmet McCaffery,
Attorney for Chemical Bank and Trust Company, Trustee under Indenture securing Missouri Pacific Secured Serial Bonds.

The Court: You may proceed.

Mr. Dearmont: If Your Honor please, the Trustee is ready to proceed. I might state that there are six or seven counsel here from out of the city, who are interested in this matter. As Your Honor knows, in these days it is difficult to get railroad transportation, but I understand they have transportation back on an early train, leaving here at about half-past one this afternoon. If it is consistent, we hope that you may be able to take the matter up this morning.

Mr. Evans: I should like to present to the Court Mr. W. Meade Fletcher, Chief Railroad Counsel for the R. F. C., who is interested in the matter.

Mr. Dearmont: If the Court please, there are three Petitions which were filed by the Trustee, two in his capacity as Trustee for the Missouri Pacific Railroad Company,

Debtor, and one in his capacity as Trustee for the International-Great Northern Railroad Company, Debtor. The Petitions are numbered 2928, 2929 and 2930.

I think I may save time here by omitting any very extensive statement as to the matters presented by these Petitions, but may I say that the first Petition, No. 2928, is a petition filed by Mr. Thompson, as Trustee of the Missouri Pacific, for advice and directions with respect to the compromise and settlement of the claim of Reconstruction Finance Corporation against the Missouri Pacific Railroad Company, Debtor.

I might also say that it will develop that considerable negotiations have been carried on by the Trustee with the Reconstruction Finance Corporation, culminating recently in a renewed offer by the R. F. C. to accept settlement of their claim, evidenced by six promissory notes, in the principal sum of $23,134,800., for $26,033,385. That represents, if Your Honor please, the principal of the debt with interest at a reduced rate—

The Court: Pardon me a moment.

(At this point the jury returned in to Court its verdict in another case.)

Mr. Dearmont: If the Court please, I had stated that the first petition has to do with the debt of the Missouri Pacific to the Reconstruction Finance Corporation, which is evidenced by six notes—I believe all dated in 1932—prior to the bankruptcy. Principal sum is $23,134,800.

Those notes by their terms bore interest at the rate of six per cent. per annum from their date. The Reconstruction Finance Corporation now has offered to accept in settlement of their claim, evidenced by these six notes, a sum equal to the principal of said notes, together with interest at six per cent. from their date to April 1, 1933—

The Court: To when?

Mr. Dearmont: April 1, 1933, which was the date these reorganization proceedings began, and four per cent. thereafter to the date of settlement. The full amount which would be due, if this offer is accepted, will be $26,033,385.

The second petition proposes settlement of the claim of The Railroad Credit Corporation against the Missouri Pacific, and the Trustee of the Missouri Pacific asks for advice and directions of the Court as to whether that claim should be settled, the full principal and interest to June 30, 1946, amounting to $1,934,507. That was the date for which I gave you the amount due to the R. F. C.

The third petition filed by Mr. Thompson, as Trustee of the International-Great Northern Railroad Company, is for advice and directions of the Court as to whether as Trustee of the International-Great Northern he should pay the claim of The Railroad Credit Corporation against the International-Great Northern. The amount due at June 30, 1946, is $397,556.

I should like to file at this time Proof of Notice, given in accordance with the terms of the Assignment of Hearing, numbers 2928, 2929 and 2930, entered by Your Honor on April 25, 1946. I think I will make no further statement; it will probably be best to produce witnesses and present this matter to the Court.

Perhaps Your Honor would like to have copies of these Motions (handing documents to the Court).

It may speed this matter up a bit if we can have a common record on these three Motions, instead of taking them up one at a time. Much of the basic testimony can be presented and it will be pertinent to all of them; as a matter of fact, the first two are almost necessarily identical one with the other.

If there is no objection, may it be understood and agreed that the record made here may be used, to the extent it is pertinent, on each of these Petitions?

The Court: Very well.

And thereupon the Trustee, to sustain the issues on his behalf, offered the following evidence:

C. D. Peet,

a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the Trustee as follows:

Direct Examination

By Mr. Dearmont:

Q. Mr. Peet, will you please state your name and official position with the Missouri Pacific Railroad Company, Debtor, and its Trustee?

A. My name is C. D. Peet; I am Chief Accounting and Financial Officer for Guy A. Thompson, Trustee of the Missouri Pacific and subsidiary companies.

Q. Including the International-Great Northern Railroad?

A. Yes, sir.

Q. Mr. Peet, are you familiar generally with the terms of the Trustee's three petitions now before the Court, numbers 2928, 2929 and 2930? A. Yes, sir.

Q. Have you prepared certain exhibits from the records in your office, concerning the matters presented by these petitions? A. Yes, sir.

Mr. Dearmont: I believe, in view of the fact that the financial position of these trust estates is quite pertinent to the issue which will be presented here by these petitions, and in view of the fact that the group of exhibits have been distributed to counsel, I will refer to the exhibits in the order in which they appear in this group of exhibits.

I will hand Your Honor a copy (handing exhibits to the Court).

Q. Mr. Peet, have you and other officers of the Trustee prepared a cash forecast for the Missouri Pacific Lines to June 30, 1946? A. Yes, sir.

Q. What is the cash and cash equivalent as of April 30, 1946, for the Missouri Pacific as shown there?

A. That amount is $90,976,574.

Q. You have set forth estimated gross receipts for May and June, 1946, have you not? A. Yes, sir.

Q. And that amounts to what? A. $32,450,000.

Q. Or a total of estimated cash and cash equivalent at June 30, 1946, of what amount? A. $129,425,574.

Q. After deducting from that figure the estimated gross disbursements for the months of May and June, what amount of cash or cash equivalent is estimated will be on hand for the Missouri Pacific as of June 30, 1946?

A. That amount is estimated at $84,804,574.

Q. What is the corresponding figure to the last figure given for the International-Great Northern?

A. That amount of cash and cash equivalent is estimated as of June 30, 1946, for the International-Great Northern, $12,008,100.

Q. You have an exhibit, I believe, setting forth the facts as to which you have just testified. This is the exhibit, is it (indicating document)? A. Yes, sir.

Mr. Dearmont: I will ask that this be marked Trustee's Exhibit 1.

(The exhibit last indicated was marked Trustee's Exhibit 1.)

Q. I ask you now, Mr. Peet, if you have prepared, or if there has been prepared in your office, under your direction, an exhibit showing generally an estimate of cash available and requirements for reorganization at June 30, 1946, under the Modified Plan of Reorganization approved by this Court by an order dated January 22, 1946.

A. I have prepared such an exhibit.

Q. I will ask you to explain this exhibit and in doing so will you state, dealing with the Missouri Pacific alone, whether the first figure in the first column on this exhibit was taken from Exhibit No. 1, as to which you have just testified. A. It is.

Q. You have added to that cash figure of $84,804,000. the amount on deposit with various Trustees, which you note are, under the Plan, to be returned to the reorganized company? A. Yes, sir.

Q. That is $9,229,000.? A. Yes, sir.

Q. The next two items represent estimated reserves, do they not, at June 30, 1946, and the amounts stated following those headings have been set up in reserve on the books of the company, have they?

A. Yes, sir; they represent actual cash reserves.

Q. The total for the Missouri Pacific, as shown by this exhibit, at June 30, 1946 is $102,893,000., is it not?

A. Yes, sir.

Q. You have next set forth the requirements under the Modified Plan of Reorganization, have you not? A. Yes.

Q. Totaling what amount? A. $71,281,180.

Q. And the next group of items sets forth the interest payments that have been made to bondholders since 1944, does it not? A. Yes, sir.

Q. And they total what amount?

A. That totals $41,680,500.

Q. Leaving net unpaid requirements under the Plan amounting to what figure? A. $29,600,680.

Q. Now, the cash balance, after deducting these requirements, amounts to what figure, as shown by this exhibit?

A. $73,292,320.

Q. Next there follows a statement of certain reserves to be taken care of. Will you refer to each one of those items that deal with the Missouri Pacific in the first column and briefly state what they are, and any basis for these estimates that you may care to give?

A. The first item in that group is "Working Fund and Contingencies" amounting to $15,000,000. That amount is estimated to be the working cash which should be available to the company, in the bank, as of date of reorganization.

Q. How is that figure arrived at?

A. That figure was arrived at in consultation with other officers of the company and it represents the best judgment of the Executive Officers.

Q. The next item?

A. The next item represents taxes, other than Federal Income and Excess Profits Taxes which we estimate will be due at June 30th, and following that is an estimate of Federal Income and Excess Profits Tax liability at June

30, which includes the balance unpaid on 1945 tax liability. That figure is subject to considerable change, depending upon the results of operation for the six months of the year, but it represents our best judgment at this time.

The next figure represents reorganization expenses which we anticipate will be required in the event the reorganization is consummated, in the amount of $2,000,000.

Following that are the two reserve items, one for Deferred Maintenance and one for Land Grant Deductions, these two latter items being the same amount as the amounts shown above, which have been added to cash at the top of the statement.

Q. The last figure in that column, the balance, is in what amount?

A. The total of these reserves amounts to $47,460,000.

Q. Leaving a balance of cash estimated to be on hand at June 30, 1946, after eliminating gross requirements under the Plan, net requirements under the Plan, and the reserve you described, of $25,832,320.? A. Yes, sir.

Q. That figure is subject to adjustment, is it not? If the Court should order the payment of the claim of the R. F. C., or the purchase, as suggested by some, due to the fact of retirement of that claim, that might or would affect the requirements under the Plan perhaps, would it not?

A. Yes, sir; if this claim were settled on the basis proposed in the Petition the requirements under the Plan would be reduced by $2,623,730.

Q. That would then leave an amount of estimated cash available at June 30, 1946, of what figure?

A. Approximately $28,455,000.

Q. In the third column of this same exhibit the same information for the International-Great Northern is stated, is it not? A. Yes, sir.

Q. The final figure representing the balance, free balance, that is estimated to be on hand at June 30, 1946, is in what amount? A. $5,341,067.

Q. Is that also subject to adjustment?

A. Yes, sir; I believe in the amount of about—

Q. It would be very small? A. As I recall, it is $22,000.

Mr. Dearmont: I will ask that this exhibit be marked Trustee's Exhibit 2, the exhibit that the witness has just identified.

(The exhibit last indicated was marked Trustee's Exhibit 2.)

Q. That last figure, $22,600., that would be added to this balance shown on Exhibit No. 2, for the International-Great Northern, at June 30, 1946? A. Yes.

Q. Mr. Peet, have you prepared an exhibit showing the amount required to settle loans of the Reconstruction Finance Corporation at June 30, 1946, based upon payment of interest at six per cent. from date of bankruptcy, April 1, 1933, and four per cent. thereafter to June 30, 1946?

A. I have prepared such an exhibit.

Q. Is this the exhibit (indicating)? A. Yes, sir.

Mr. Dearmont: I will ask that it be marked Trustee's Exhibit No. 3.

(The exhibit last indicated was marked Trustee's Exhibit 3.)

Q. On this exhibit, Mr. Peet, it is shown that the total amount required to acquire or settle the Reconstruction Finance Corporation notes, at June 30, 1946, would be what amount?

A. The total amount required to settle on the basis indicated, would amount to $26,033,385.

Q. Mr. Peet, I will show you another exhibit headed "List of Collateral Pledged with Reconstruction Finance Corporation as Security for Loans": Was that prepared by you, or in your office under your direction? A. Yes, sir.

Mr. Dearmont: I ask that that be marked Trustee's Exhibit No. 4.

(The exhibit last indicated was marked Trustee's Exhibit No. 4.)

Q. On this Exhibit No. 4, Mr. Peet, there is set forth a statement showing stock, bonds, and notes pledged as

collateral security for these notes of the Missouri Pacific payable to the Reconstruction Finance Corporation; is that correct? A. Yes, sir.

Q. In addition to showing the various items pledged, you have also entered in various columns, first, the par value of these securities and notes; second, the book value; then, under the general heading "Estimated Value," you have shown "Market Quotation," "Market Value" and "Estimated or Book Value."

In the first place, I should like to ask you if all of the collateral pledged as security for these R.F.C. loans are correctly listed in this exhibit.

A. All of the collateral excepting the cash item of $20,000., which represents payment made under the Prescott and Northwestern bonds last year, so there is an item of $20,000. on deposit as collateral with the Reconstruction Finance Corporation, in addition to the securities which are shown on this statement.

Q. Otherwise, the statement correctly sets forth all of the collateral that is pledged as security for the loan?

A. Yes, sir.

Q. Mr. Peet, under "Estimated Value", the general heading, you have "Market Quotation": It seems that in each instance where a market quotation is given it is given as of April 12th, except in one case of Texas & Pacific common stock, where the date is April 11th. Did you check these quotations yourself?

A. I had them checked in my office, yes.

Q. And the next column is "Market Value" which is based upon the market quotation listed in the preceding column, is it? A. Yes, sir.

Q. And the "Estimated or Book Value" given for several of the items, which appears in the next column, represents whose judgment?

A. They represent my judgment.

Q. I note that as to the last two items that appear it says, "No estimated value included in total": Is that due to the fact that this claim, inter-company claim, as we generally refer to it, is in controversy and the amount to be allocable is unknown? You didn't mean to indicate that there was no value in those notes?

A. No, sir; I didn't intend to indicate that, but your first remark is correct.

The Court: First what?

The Witness: First remark; there is no value shown because this inter-company claim is now in litigation.

Mr. Dearmont: Q. Eliminating the two notes, what is the total estimated value of this collateral, as shown by the exhibit? A. The total is $43,858,025.

Q. And to that should be added $20,000. cash?

A. $20,000. in cash.

Q. Which I understand is on deposit with the Reconstruction Finance Corporation? A. That is correct.

The Court: I don't know whether I know how to read a statement like this. Take that first item: American Refrigerator Transit Company, number of shares 927, par value $92,700., estimated book value $1,854,000.: I don't understand that.

The Witness: It represents an estimate of the value of those shares at this time, Your Honor.

The Court: In that other column under "Book Value" you put down $92,700.

The Witness: That is the value at which the shares were carried on the books of the Missouri Pacific, $92,700.

Mr. Dearmont: That estimate that appears on this exhibit is low. It is rather a complicated situation.

The Court: This book value—that is what it is carried at on the books of the Missouri Pacific?

The Witness: That is correct.

Mr. Dearmont: Q. It is your judgment that the value, the actual market value, of this stock listed is approximately $1,854,000. at that time?

A. Yes, which is at the rate of two thousand dollars per share.

Mr. Dearmont: I might state—I think it probably is not too important, whether this exhibit is a bit conservative or not, in view of the fact that we were only interested in showing that the collateral behind this loan was substantially in excess of the principal and interest.

The Court: I was trying to find out how to read the exhibit. I didn't understand it.

Mr. Dearmont: There may be a very serious technical question with reference to the stock of the ART—whether the stock itself represents the full value of interest of the Missouri Pacific may be subject to considerable question. I think those are all the exhibits directed to the first petition.

Mr. Dearmont: I next take up the two exhibits dealing with the debt of the Missouri Pacific to The Railroad Credit Corporation.

I will ask that this first exhibit be marked Trustee's Exhibit 5.

(The exhibit last indicated was marked Trustee's Exhibit 5.)

Q. I show you what has been marked Trustee's Exhibit 5, and ask you if it was prepared by you or in your office under your direction. A. Yes, it was.

Q. That is a statement, is it not, showing the amount required to settle loans of The Railroad Credit Corporation, at June 30, 1946, and has to do with the Missouri Pacific Railroad Company? A. Yes, sir.

Q. It shows the total amount due of $1,934,507. at June 30, 1946? A. That is right.

Q. And that is the full principal and full unpaid interest? A. Yes, sir.

Q. The interest on that debt is currently being charged at the rate of one per cent. per annum? A. Yes.

Mr. Dearmont: I will ask that the next exhibit be marked Trustee's Exhibit 6.

(The exhibit last indicated was marked Trustee's Exhibit 6.)

Q. Was this Exhibit No. 6 also prepared by you or in your office under your direction? A. Yes, sir.

Q. It shows a list of collateral pledged with The Railroad Credit Corporation as security for its loans to the Missouri Pacific, does it not? A. Yes, sir.

Q. I call your attention to the note at the bottom of that exhibit—

The Court: What exhibit is this?

Mr. Dearmont: That is Exhibit No. 6. I want to call attention to the note at the bottom of this exhibit which says, "The securities pledged with the Reconstruction Finance Corporation are also repledged with The Railroad Credit Corporation subject always to the lien of the Reconstruction Finance Corporation". That appears from the notes and the claim filed here.

Q. You know that to be a fact, Mr. Peet? A. Yes, sir.

Mr. Dearmont: I ask that the last two be marked Trustee's Exhibits 7 and 8.

(The exhibits last indicated were marked Trustee's Exhibits 7 and 8.)

Q. I ask you whether these last two exhibits were prepared by you or in your office under your direction?

A. They were.

Q. The first exhibit, marked Exhibit No. 7, shows the amount required to settle or acquire the claim of The Railroad Credit Corporation against International-Great Northern Railroad Company, Debtor, at June 30, 1946, amounting to $397,556.; is that correct? A. Yes, sir.

Q. And Exhibit No. 8 sets forth a list of collateral pledged with The Railroad Credit Corporation as security for the loans; is that correct? A. Yes, sir.

Q. And that includes an estimated value which is largely made up of the market value of $822,300.—par value, International-Great Northern Adjustment Bonds, is that right? A. Yes, sir.

Q. The total estimated value of this collateral is $420,220., as shown by the exhibit? A. Yes, sir.

Q. Does that figure, in your opinion, represent the fair estimated value of this collateral? A. Yes, sir.

Mr. Dearmont: Now, Your Honor, I should like to offer in evidence these eight exhibits which have been identified by the witness, Mr. Peet.

The Court: Very well.

Trustee's Exhibits 1 to 6 are as follows:

Exhibit 1.

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6925

Missouri Pacific Lines

Cash Forecast to June 30, 1946

	Missouri Pacific	Gulf Coast Lines	International-Great Northern	System Lines
# Cash and Cash Equivalent as of April 30, 1946	$ 90,976,574	$ 21,672,626	$ 12,546,100	$125,195,310
Estimated Gross Receipts May and June 1946	38,459,000	9,681,000	7,419,000	55,559,000
Total	$129,435,574	$ 31,353,626	$ 19,965,100	$180,754,310
Estimated Gross Disbursements May and June 1946	44,631,000	10,646,000	7,967,000	63,234,000
Estimated Cash and Cash Equivalent as of June 30, 1946	$ 84,804,574	$ 20,707,626	$ 12,008,100	$117,520,310
Estimated Gross Disbursements include:				
(1) Interest Payments: Equipment Trusts	58,674	.....	.....	58,674
Texarkana Union Sta. Trust	11,250	.....	.....	11,250
(2) Principal Payments—Equipment Trusts	477,000	.....	.....	477,000
(3) Federal Inc. & Excess Profits Tax Payable 6/15/46	7,650,000	1,634,500	484,500	9,769,000
" " " " " " Deficiency—G. C. L.	.....	675,500	.....	675,500
(4) Estimated Wage Increase Jan. 1, to June 30, 1946	6,821,500	1,076,000	1,077,500	8,974,000
# Does not include Funds held in Reserve at 4/30/46 as follows:				
Deferred Maintenance	$ 3,610,000	$ 386,000	$ 294,000	$ 4,290,000
U. S. Government Bills account Land Grant Deductions	5,250,000	465,000	465,000	6,180,000

Office of Chief Acctg. & Fin. Officer,
St. Louis, Mo., May 7, 1946.

Exhibit 2.

In the District Court of the United States, Eastern Divisio
Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debto
In Proceedings for the Reorganization of a Railroad, No. 69

Missouri Pacific Lines

Estimate of Cash Available and Requirements for Reorganization at Ju
Under Modified I. C. C. Plan

(Based on Securities of new company being issued as of January 1, 1943,
accruing thereon from that date with appropriate allowance for i
currently being paid)

	Missouri Pacific
Estimated Cash and Cash Equivalent as of June 30, 1946	$ 84,804,000
Amounts on deposit with various Trustees to be returned to Reorganized Company (Estimated)	
Estimated Reserves as of June 30, 1946	9,239,000
Special Deposits—for Deferred Maintenance	2,610,000
" " —for Anticipated Land Grant Deductions from U. S. Government Bills	5,250,000
Total	$102,293,000
Requirements Under I. C. C. Plan	
Cash to be paid bondholders along with new securities	$ 23,053,317
Interest on New First Mortgage Bonds:	
Series "A" 3½% $ 31,471,800 1/1/43 to 6/30/46 3½ Years	2,804,458
" "C" 4% 121,477,030 " to " 3½ "	12,760,482
New First Mortgage Sinking Fund ¼% $152,948,830 1/1/43 to 6/30/46 3½ Years	1,069,277
Interest and Sinking Fund on General Mortgage Bonds:	
Series "A" Interest 4½% $120,676,327 1/1/43 to 6/30/46 3½ Years	13,598,289
" "A" Sinking Fund ½% 120,676,327 " to " 3½ "	1,510,930
" "B" Interest 5% 38,498,745 " to " 3½ "	5,983,599
" "B" Sinking Fund ½% 38,498,745 " to " 3½ "	538,780
Dividends on Preferred Stock 57,459,688 " to " 3½ "	8,838,982
Interest on Plaza-Olive Bldg. 1st Mtge. Bonds 3% $527,000 1/1 to 6/30/46	7,905
Total Requirements	$ 71,231,180

Less Interest Paid:

Court Order	2370	Paid—April	1944	(Mo. Pac. 1st & Ref. Mtge. Bonds)	$ 13,159,513	
" "	2371	" "	"	(N. O. T. & M. 1st Mtge. & Income Bonds)	123,250	
" "	2372	" "	"	(L-G. N. 1st Mtge. Bonds)	.....	
" "	2577	" Dec.	"	(Mo. Pac. 1st & Ref. Mtge. Bonds)	13,159,525	
" "	2578	" "	"	(N. O. T. & M. 1st Mtge. & Income Bonds)	123,250	
" "	2579	" "	"	(L-G. N. 1st Mtge. Bonds)	.....	
" "	2606	" "	"	(C. B. U. P. 1st Mtge. Bonds)	97,620	
" "	2789	" Sept.	1945	(Mo. Pac. 1st & Ref. Mtge. Bonds)	13,159,525	
" "	2791	" "	"	(L-G. N. 1st Mtge. Bonds)	.....	
" "	2792	" "	"	(C. B. U. P. 1st Mtge. Bonds)	130,240	
" "	2793	" "	"	(Cairo & Thebes 1st Mtge. Bonds)	239,800	
" "	2790	" Dec.	"	(N. O. T. & M. 1st Mtge. & Income Bonds)	.....	
" "	2790	" Apr.	1946	(N. O. T. & M. 1st Mtge. Pledged Bonds)	55,500	

Miscl. Interest & Dividends retained by R. F. C., J. P. Morgan and Railroad Credit Corpn.

Missouri Pacific Lines

Estimate of Cash Available and Requirements for Reorganization at June
Under Modified I. C. C. Plan

(Based on Securities of new company being issued as of January 1, 1943, an
accruing thereon from that date with appropriate allowance for Inter
currently being paid)

		Missouri Pacific	
Estimated Cash and Cash Equivalent as of June 30, 1946		$ 54,894,000	$
Amounts on deposit with various Trustees to be returned to Reorganized Company (Estimated)		9,229,000	
Estimated Reserves as of June 30, 1946			
Special Deposits—for Deferred Maintenance		3,610,000	
" " —for Anticipated Land Grant Deductions from U. S. Government Bills		5,250,000	
Total		$102,998,000	$
Requirements Under I. C. C. Plan			
Cash to be paid bondholders along with new securities		$ 33,053,317	$
Interest on New First Mortgage Bonds:			
Series "A" 3½% $ 31,471,800	1/1/43 to 6/30/46 3¾ Years	3,804,453	
" "C" 4% 121,477,090	" to " 3¾ "	12,790,432	
New First Mortgage Sinking Fund ¼% $152,948,890	1/1/43 to 6/30/46 3¾ Years	1,009,377	
Interest and Sinking Fund on General Mortgage Bonds:			
Series "A" Interest 4½% $130,676,327	1/1/43 to 6/30/46 3¾ Years	13,598,389	
" "A" Sinking Fund ½% 130,676,327	" to " 3¾ "	1,510,230	
" "B" Interest 5% 88,498,745	" to " 3¾ "	8,962,590	
" "B" Sinking Fund ½% 88,498,745	" to " 3¾ "	893,200	
Dividends on Preferred Stock 57,659,633	" to " 3¾ "	8,838,983	
Interest on Plaza-Olive Bldg. 1st Mtge. Bonds 3%	$537,000 1/1 to 6/30/46	7,905	
Total Requirements		$ 71,281,180	$
Less Interest Paid:			
Court Order 2370	Paid—April 1944 (Mo. Pac. 1st & Ref. Mtge. Bonds)	$ 12,159,525	$
" " 2371	" " " (N. O. T. & M. 1st Mtge. & Income Bonds)	122,250	
" " 2372	" " " (I-G. N. 1st Mtge. Bonds)	.....	
" " 2577	" Dec. " (Mo. Pac. 1st & Ref. Mtge. Bonds)	12,159,525	
" " 2578	" " " (N. O. T. & M. 1st Mtge. & Income Bonds)	122,250	
" " 2579	" " " (I-G. N. 1st Mtge. Bonds)	.....	
" " 2606	" " " (C. B. U. P. 1st Mtge. Bonds)	97,600	
" " 2789	" Sept. 1945 (Mo. Pac. 1st & Ref. Mtge. Bonds)	12,159,525	
" " 2791	" " " (I-G. N. 1st Mtge. Bonds)	.....	
" " 2792	" " " (C. B. U. P. 1st Mtge. Bonds)	190,240	
" " 2793	" " " (Cairo & Thebes 1st Mtge. Bonds)	229,800	
" " 2790	" Dec. " (N. O. T. & M. 1st Mtge. & Income Bonds)	.....	
" " 2790	" Apr. 1946 (N. O. T. & M. 1st Mtge. Pledged Bonds)	85,500	
Miscl. Interest & Dividends retained by R. F. C., J. P. Morgan and Railroad Credit Corpn.			
R. F. C.		582,455	
J. P. Morgan		516,375	
Railroad Credit Corporation		213,375	
Total Interest Paid		$ 41,630,500	$
Net Unpaid Requirements Under Plan		$ 29,650,680	$
Cash Balance after Requirements		$ 73,292,320	$ 10
Reserves to be taken care of:			
Working Fund and Contingencies		$ 15,000,000	$
All taxes (except Federal Income and Excess Profits Taxes) which will be accrued and not paid at June 30, 1946		1,000,000	
Estimated Federal Income & Excess Profits Tax Liability at June 30, 1946, including balance payable on 1945 tax liability and reserves for possible deficiency in prior years		20,000,000	4
Reorganization expense (estimated)		2,000,000	
Reserve for Deferred Maintenance		3,610,000	
Reserve for Land Grant Deductions		5,250,000	
Total Reserves		$ 47,480,000	$
Balance		$ 25,812,320	$ 10

Office of Chief Acctg. & Fin. Officer,
St. Louis, Mo., May 7, 1946.

...Eastern Division,
Missouri
...oad Company, Debtor
... a Railroad, No. 6935

...

Reorganization at June 30, 1946
Plan

... of January 1, 1943, and Interest
...iate allowance for Interest
)

	Missouri Pacific	Gulf Coast Lines	International-Great Northern	Total
.....	$ 84,804,000	$ 20,708,000	$ 12,008,000	$117,520,000
(Esti-				
.....	9,229,000	492,000	728,000	10,449,000
.....	3,610,000	386,000	394,000	4,390,000
Bills.	5,250,000	465,000	465,000	6,180,000
.....	$102,893,000	$ 22,051,000	$ 13,595,000	$138,539,000
.....	$ 23,058,317	$ 3,611,899	$ 3,662,901	$ 30,333,617
.....	3,804,458	.....	50,838	3,855,296
.....	12,760,482	3,762,498	483,804	17,006,784
rs....	1,069,277	235,156	33,870	1,338,303
.....	13,598,369	3,008,246	2,399,906	19,006,521
.....	1,510,930	334,250	266,656	2,111,836
.....	5,983,599	.....	753,682	6,737,281
.....	598,360	.....	75,368	673,728
.....	8,888,983	.....	1,201,462	10,090,445
.....	7,905	.....	.....	7,905
.....	$ 71,281,180	$ 10,952,049	$ 8,928,487	$ 91,161,716
.....	$ 13,159,525	$	$	$ 13,159,525
)	128,250	3,296,775	.....	3,425,025
.....	.....	.....	1,610,000	1,610,000
.....	13,159,525	.....	.....	13,159,525
.....	128,250	3,296,775	.....	3,425,025
.....	.....	.....	1,610,000	1,610,000
.....	97,680	.....	.....	97,680
.....	13,159,525	.....	.....	13,159,525
.....	.....	.....	1,610,000	1,610,000
.....	130,240	.....	.....	130,240
.....	339,800	.....	.....	339,800
.....	.....	2,197,850	.....	2,197,850
.....	85,500	.....	.....	85,500
Corpn.				
.....	562,455	.....	.....	562,455
.....	516,375	.....	.....	516,375
.....	213,375	.....	33,554	246,929
.....	$ 41,680,500	$ 8,791,400	$ 4,863,554	$ 55,335,454
.....	$ 29,600,680	$ 2,160,649	$ 4,064,933	$ 35,826,262
.....	$ 73,292,320	$ 19,890,351	$ 9,530,067	$102,712,738
.....	$ 15,000,000	$ 3,000,000	$ 2,000,000	$ 20,000,000
crued				
.....	1,600,000	307,000	130,000	2,037,000
uding				
prior				
.....	20,000,000	4,500,000	1,000,000	25,500,000
.....	2,000,000	300,000	200,000	2,500,000
.....	3,610,000	386,000	394,000	4,390,000
.....	5,250,000	465,000	465,000	6,180,000
.....	$ 47,460,000	$ 8,958,000	$ 4,189,000	$ 60,607,000
.....	$ 25,832,320	$ 10,932,351	$ 5,341,067	$ 42,105,738

Exhibit 3.

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6935

Missouri Pacific Railroad Company

Statement showing amount required to settle loans of Reconstruction Finance Corporation at June 30, 1946 shown with Interest at 6% to date of Bankruptcy April 1, 1933 and 4% thereafter.

Interest:		
Date of loans to March 31, 1933 @ 6%		$ 1,084,288
April 1, 1933 to June 30, 1946 @ 4%		12,268,416
Total Interest		$13,352,704
Payments:		
Interest paid prior to bankruptcy @ 6%		$ 544,414
By applications of interest and dividends on pledged securities		
Mo. Pac. First & Ref. Mtge. Bonds	$8,062,500	
N. O. T. & M. First Mtge. Bonds	855,000	
D. & R. G. W. Bonds	156,380	
P. N. W. Bonds	48,700	
Ft. W. B. Stock	156,000	
T. & P. Common Stock	631,125	9,909,705
Total Payments		$10,454,119
Unpaid Interest		$ 2,898,585
Principal amount of Loans		23,134,300
Amount Due		$26,032,885

Office of Chief Acctg. & Fin. Officer,
St. Louis, Mo., April 17, 1946.

Exhibit 4.

In the District Court of the United States, E
Eastern Judicial District of Miss
In the Matter of Missouri Pacific Railroad C
In Proceedings for the Reorganization of a R

Missouri Pacific Railroad Compa

List of Collateral Pledged With Reconstruction F
as Security for Loans

Securities Pledged:	Number of Shares	Par Value	Boo
Capital Stock:			
American Refrigerator Transit Co.	927	$ 92,700	$
Fort Worth Belt Ry. Co.	1,600	160,000	
New Orleans, Texas & Mexico Ry. Co.	5,050	505,000	
Texas & Pacific Ry. Co.—Common	114,750	11,475,000	5
International-Great Northern R. R. Co.	74,989	7,498,900	
Carried on Books of N. O. T. & M. Ry. Co.			2
Bonds:			
Denver & Rio Grande Western R. R. Co., Refdg. & Imp.		1,000,000	1
Missouri Pacific R. R. Co. Convertible Gold Bonds		899,000	
Carried on Books of Missouri Improvement Co.			
Missouri Pacific R. R. Co. First & Refunding Series I		32,250,000	32
New Orleans, Texas & Mexico Ry. Co. 1st Mtge. Series D		1,900,000	
Carried on Books of N. O. T. & M. Ry. Co.			1
International-Great Northern R. R. Co., Adj. Mortgage Bonds		2,095,000	
Carried on Books of Missouri Improvement Co.			
Interstate Railway Co., First Mortgage Bonds		1,622,000	1
Prescott & Northwestern R. R. Co. First Mortgage		55,000	
Notes:			
New Orleans, Texas & Mexico Ry. Co.		9,955,227	9
International-Great Northern R. R. Co.		2,486,510	2
Total		$71,994,337	$58

Office of Chief Acctg. & Fin. Officer,
St. Louis, Mo. April 19, 1946

Exhibit 4.

Exhibit 4.

the United States, Eastern Division,
icial District of Missouri
ri Pacific Railroad Company, Debtor
eorganization of a Railroad, No. 6935

cific Railroad Company

Vith Reconstruction Finance Corporation
curity for Loans

Par Value	Book Value	Estimated Value — Market Quotation	Estimated Value — Market Value	Estimated Value — Estimated or Book Value	Total
$ 92,700	$ 92,700		$	$1,854,000	
160,000	619,890			320,000	
505,000	606,000	40 (bid) Apr. 12	202,000		
11,475,000	5,312,427	48¼ Apr. 11	5,536,688		
7,498,900					
	2,406,821			—	
1,000,000	1,000,000	62½ Apr. 12	625,000		
899,000		42⅞ Apr. 12	385,446		
	1				
32,250,000	32,250,000	99 Apr. 12	31,927,500		
1,900,000		96½ Apr. 12	1,833,500		
	1,900,000				
2,095,000		49¼ Apr. 12	1,031,787		
	1				
1,622,000	1,622,000			87,104	
55,000	55,000			55,000	
9,955,227	9,955,227	(No estimated value included in total)			
2,486,510	2,486,510	(No estimated value included in total)			
$71,994,337	$58,306,577		$41,541,921	$2,316,104	$43,858,025

Exhibit 5.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6935

Missouri Pacific Railroad Company

Statement Showing Amount Required to Settle Loans of Railroad Credit Corporation at June 30, 1946.

Principal amount of Loans			$3,800,000
Interest from date of loans to June 30, 1946			513,000
Total			$4,313,000
Payments	Principal	Interest	
Cash payment prior to bankruptcy	.....	$ 37,868	
By application of principal of, dividends and interest on pledged securities and distributions retained			
Union Terminal Notes Principal & Interest	$ 550,690	149,311	
La. Highway Comm. Warrants and Interest	169,610	7,643	
Chester & Mt. Vernon Interest & Dividends	156,232	90,418	
Kans. Okla. & Gulf Dividends	21,197	50,557	
Rock Island Ark. & La. Note Interest	36,286	9,072	
Distributions	936,356	163,253	
Total Payments	$1,870,371	$508,122	2,378,493
Balance Due			$1,934,507

Office of Chief Acctg. & Fin. Officer,
St. Louis, Mo., April 17, 1946.

Exhibit 6.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6935

Missouri Pacific Railroad Company

List of Collateral Pledged With Railroad Credit Corporation as Security for Loans

Securities Pledged:	Number of Shares	Par Value	Book Value	Market Quotation
Capital Stock:				
Arkansas & Memphis Ry. Br. & Terml. Co.—Pfd.	5,500	$ 550,000	$ 550,000	
Chester & Mt. Vernon R. R. Co.—Common	2,000	100,000	196,060)	
" " " " —Preferred	1,500	150,000	150,000)	
Denver & Rio Grande Western R. R. Co.—Common	150,000	No par value	10,293,524	
" " " " " " —Preferred	6,088	608,800	271,582	8 (bid) Apr. 12
Missouri-Illinois R. R. Co.	11,471	1,147,100	1,279,346	
New Orleans, Texas & Mexico Ry. Co.	13,218	1,321,800	1,740,063	40 (bid) Apr. 12
Texas-Pacific Mo. Pac. Terminal R. R. of New Orleans	9,996	999,600	952,119	
Western Coal & Mining Co.	10,000	1,000,000	552,000	
Kansas, Oklahoma & Gulf Ry. Co. Series A Preferred	771	77,100	77,002)	
" " " " " " B "	6	600	506)	95 Apr. 17
" " " " " " C "	197	19,700	19,646)	
Bonds:				
Chester & Mt. Vernon R. R. Co. 1st Mortgage		250,000	244,500	
Notes:				
Rock Island, Ark. & Louisiana R. R. Co. 4%		453,600	453,600	
Advances:				
The Railroad Credit Corporation		114,029	114,029	
Total		$ 6,792,329	$16,893,977	

Note—The securities pledged with the Reconstruction Finance Corporation are also repledged with the Railroad Credit C
the Reconstruction Finance Corporation.

Office of Chief Acctg. & Fin. Officer,
St. Louis, Mo. April 19, 1946

Exhibit 6.

imated Value Market Value	Estimated or Book Value	Total
	$ 550,000	
	)	
	) 200,000	
$ 48,704	—	
	1,280,000	
528,720		
	952,119	
	1,000,000	
73,245		
570		
18,715		
	244,500	
	—	
	89,029	
$ 669,954	$4,315,648	$ 4,985,602

orporation subject always to the lien of

Mr. Dearmont: Q. Mr. Peet, in connection with Exhibits Nos. 1 and 2, which are a cash forecast and estimate of cash available at June 30, 1946, in the two Debtor estates, the Missouri Pacific and the International-Great Northern, I should like to ask you whether it is true, as stated in the Petitions, that substantially all of the cash which will be on hand in the hands of the Trustee and his officers at June 30, 1946, has been derived from the operation of property subject to the Missouri Pacific Railroad Company's First and Refunding Mortgage and General Mortgage of the Missouri Pacific.

A. A very substantial part of it, yes; just three small segments of lines covered by mortgages superior in lien to the First and Refunding Mortgage.

Q. You refer to the Central Branch Union Pacific First Mortgage? A. Yes, sir.

Q. Little Rock, Hot Springs and Cairo & Thebes First Mortgage? A. Yes, sir.

Q. The total principal amount of all those mortgages added together is not much in excess, if any, of six million dollars, is it? A. It is less than that.

Q. Can you give roughly your estimate?

A. Including the pledged bonds of the Central Branch Union Pacific, I believe approximately four million two.

Mr. Dearmont: I believe that is all I care to offer for Mr. Peet.

Cross Examination

By Mr. Biggs:

Q. Mr. Peet, in your exhibit showing the collateral deposited to secure the Railroad Credit loans the last item is advances to The Railroad Credit Corporation, $114,029. Why can not that amount be offset against the Missouri Pacific liability to The Railroad Credit Corporation?

A. That represents the remaining portion of the Missouri Pacific contribution under the Marshalling and Distributing Plan, which I believe was established back in 1931 or 1932, and the amounts are available only as the distributions are made by The Railroad Credit Corporation to the various railroads who contributed these amounts in those years. As distributions are made by

The Railroad Credit Corporation the amount of this advance is credited on our loan. Originally, that was very substantially in excess of the $114,000. which is shown on this statement.

Q. Now we are going to pay off the R. F. C., if the Court so orders, but we can't use the—

A. Only to the extent that distributions are made to all railroad companies who have a share in this fund.

Q. Let me see if I understand right: If the Court orders payment to the Railroad Credit Corporation as requested in the Petition, then sometime in the future you will get payment on account of this $114,000. back from the R. C. C.?

A. To the extent that the amount is still due us, yes. If between now and the time of payment there might be another distribution by The Railroad Credit Corporation this amount would be reduced.

The Court: After payment—

The Witness: After payment we would receive whatever would still be due us.

Mr. Dearmont: May I suggest that Mr. Buckland, representing The Railroad Credit Corporation, is here and he will take the stand?

Mr. Biggs: I didn't understand it. It seemed to me that that could be offset.

Mr. Dearmont: I might state, off the record, for counsel's information.

(Here ensued colloquy off the record.)

Mr. Chasnoff: I should like to ask Mr. Peet one question, while he is on the stand.

Cross Examination

By Mr. Chasnoff:

Q. In the Trustee's petition it is stated, on page 8, that the settlement of the claim "would result in an annual interest saving, based on the contract rate, of $1,388,088.". This is intended to represent a gross interest saving without taking into account other items that will lessen that amount as a net saving to the estate, isn't it? I have in

mind particularly that this doesn't take into account any tax saving, any tax payments that are made on account of payment of interest? When you reduce the rate of interest you increase your tax to an extent?

A. That is correct; that has not been taken into account.

Mr. Dearmont: No further questions. That is all for Mr. Peet.

Mr. Dearmont: I think it may be well to have an understanding that all matters of record in this reorganization proceeding, which may be pertinent to matters raised by the three Petitions now being presented to the Court, may be considered in the record without taking the time to specifically offer the various things that may be pertinent.

I think that is true without any such statement by me, but I thought perhaps that understanding should be noted.

The Court: Very well.

Mr. Dearmont: I particularly would like to offer for the record the Missouri Pacific Railroad Company First and Refunding Mortgage, dated April 2, 1917, which has heretofore been filed of record in this proceeding;

Also, the Missouri Pacific General Mortgage, the International-Great Northern First Mortgage, International-Great Northern Adjustment Mortgage;

I should also like to offer and particularly note for the record Petition No. 44, appearing in Missouri [Pacific] Printed Record at page 269, which is the petition of the Guaranty Trust Company, as Trustee under the First and Refunding Mortgage, asking leave to intervene, and setting forth the claim against the estate;

The Proof of Claim 495, appearing in the Printed Record at page 3629, which is the formal Proof of Claim of the First and Refunding Mortgage, later filed by the successor trustee, Manufacturers Trust Company and Benjamin F. Edwards, who was then individual trustee;

Proof of Claim 499, appearing in the Printed Record at page 3669, which is the claim of the New York Trust Company, Trustee under International-Great Northern Adjustment Mortgage;

Proof of Claim 502, Reconstruction Finance Corporation against the Missouri Pacific Railroad Company, Debtor, Record page 3693;

Proof of Claim of J. P. Morgan Company, evidenced by nine promissory notes of the Debtor, in the aggregate principal amount of $5,850,000., which appears in Printed Record at page 3703;

Also Proof of Claim No. 504, claim of Bankers Trust Company and Benjamin F. Edwards, as Trustees, under the General Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, appearing in Printed Record at page 3707;

Proof of Claim 524, appearing in Printed Record at page 3855, being Proof of Claim of Kuhn, Loeb Company, evidenced by eight promissory notes of the Missouri Pacific Company, as set forth therein;

Also Proof of Claim 525 of Railroad Credit Corporation against the Missouri Pacific Railroad Company;

Proof of Claim 526, Record page 3877, Railroad Credit Corporation against International-Great Northern Railroad Company, and perhaps, because the Petition quotes from that, I should also refer particularly, in this offer, to the first Plan of Reorganization, submitted to this Court by the Interstate Commerce Commission, which begins with page 12001 of the Printed Record, and includes the Report of the Commission of January 10, 1940; Supplemental Report of the Commission of April 9, 1940, and Supplemental Order of the Commission of April 9, 1940; and also to the Modified Plan of Reorganization and Further Findings of the Commission, beginning at page 20723 of the Printed Record.

I should have said that Proof of Claim 525 appears on page 3867 of the Printed Record.

I should now like to call Mr. Thompson, Trustee of the Debtor Company.

GUY A. THOMPSON,

a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the Trustee as follows:

Direct Examination,

By Mr. Dearmont:

Q. Mr. Thompson, state your full name and your connection with the Missouri Pacific Lines, including the International-Great Northern Railroad Company, Debtor.

A. My name is Guy A. Thompson. I am Trustee, under Section 77, of the Missouri Pacific Railroad Company and International-Great Northern Railroad Company.

Q. You are familiar with the three Petitions now being presented to the Court, which I believe you signed?

A. Yes, sir.

Q. In your Petition No. 2928, which asks for the advice and direction of the Court with reference to the payment or retirement of the claim of the Reconstruction Finance Corporation against the Missouri Pacific, you state that during the last several years you have given consideration to the advantages which might accrue to the estate of the Missouri Pacific Railroad Company, Debtor, and its creditors from a satisfactory settlement of that claim. I will ask you simply to present to the Court the facts with reference to your consideration of this matter, your contact with the Reconstruction Finance Corporation, and any other facts bearing on this matter, which led to the filing of the Petition now under consideration by the Court.

A. I had from time to time considered the possibility and the advisability of making a settlement of the R.F.C. claim if that could be done on a reasonable basis.

Your Honor will remember that in 1942, I think it was, the Debtor filed a petition in this matter asking that Your Honor would direct him to settle the R.F.C. claim, and that we had a hearing on that petition. I opposed the requested payment on several grounds at that time and one of those grounds was that the financial situation was not such as would make it prudent to pay the R.F.C., and Your Honor denied that application.

It did not become a prudent thing to do, to pay the

R.F.C. if I could settle with the R.F.C. on a proper basis, until, I think it was 1944. At that time, as I recall, the cash would have been adequate had I not gotten orders of Court authorizing the payment of interest. I may be wrong as to the years, and I have asked counsel that he correct me, if I am, and call my attention to it.

Mr. Dearmont: I think you are probably referring to 1943, when you paid off the underliers and ten million on the River and Gulf. perhaps.

The Witness: Perhaps it was in 1943. In that year I thought it wise, and I think there was no dissent to that, although I am not sure, unless Mr. Quisenberry dissented, and I don't remember definitely—to pay the underliers. By those I mean the old Missouri Pacific mortages on the line between St. Louis and Kansas City, amounting to approximately fourteen million dollars, and to make a ten million dollar principal payment ratably to the holders of the River and Gulf bonds. Doing that did not leave adequate money in 1943 to have made settlement with the R. F. C. and provide for the reserves that were necessary.

In 1944, as I remember, I made, with Your Honor's permission and direction, substantial interest payments to the First and Refunding bondholders and to the holders of N.O.T. & M. First Mortgage and Income bonds. Had I not made those interest payments I would probably have had enough to make it prudent to settle with the R. F. C., but, making those interest payments, I did not have, and I thought it fair and just and reasonable that these bondholders should have some interest.

In that connection, I might state parenthetically that the total amount of interest paid to the First and Refunding bonds during this entire reorganization amounts to a fraction less than an average of two per cent. on their debt. That is all they have gotton during these thirteen years.

Then when it came down to the year 1945, during the autumn of that year, it seemed to me that I would certainly have enough to make settlement with the R.F.C. I took the matter up with my counsel and told him it was my desire to do what had been my desire to do all along, as

soon as it could conveniently and legally be done, and we went into the matter very carefully—I mean, so far as the propriety of paying and the ability to pay, if I could make a satisfactory settlement. I had reached the conclusion that if I could do so, and the Court would approve, I would take up this R.F.C. claim.

About that time, but after I had reached this conclusion and given much thought to this matter, I received from Senator Henderson, Chairman of the R.F.C., a letter dated November 21, 1945, which I received on November 23d, I think, and which I think I might read. It is one of the few letters I have and it gives this chain of developments at that time. He says:

"The $23,134,800. of loans made in 1932 and 1933 by this Corporation to the Missouri Pacific Railroad Company were, by their terms, short term loans, but no part of the principal thereof has ever been repaid, despite the fact that they are fully and adequately secured. It is noted from the monthly report of selected income and balance sheet items that the Missouri Pacific System had $28,997,277. in cash and $136,953,000. of temporary cash investments as of July 31, 1945.

"In view of the above mentioned factors and the long continuance of the reorganization proceedings, our Directors are of the opinion that payment of this Corporation's claim ought to be made at the present time.

"This will advise that this Corporation will accept in full discharge of its claim against Missouri Pacific Railroad Company a cash payment equal to the principal amount of said loans, plus interest accrued on the notes evidencing said loans at the rate expressed in said notes to the date of bankruptcy (April 1, 1933) and at the rate of 4% per annum from the date of bankruptcy to the date of payment of said claim, less cash payments heretofore credited by this Corporation to interest on said loans, upon condition that said payment shall be made within sixty days from the date of this letter.

"You will appreciate that this offer represents a substantial concession on the part of this Corporation.

"You are hereby requested to file with the District Court a petition for authority to pay this Corporation's claim on the basis hereinabove set forth.

Sincerely yours,

CHARLES B. HENDERSON."

On receipt of the letter I acknowledged it and told Senator Henderson that he would hear more fully from me later.

On the 26th of November, three days later, I addressed a joint letter to Mr. W. Lloyd Kitchel, of New York, representing the First and Refunding Insurance Group, of which Mr. Stedman is Chairman; Mr. Leonard D. Adkins, Counsel for the Committee of the N.O.T. & M.; Mr. Sanford H. E. Freund, Counsel for Holders of the General Mortgage 4's of the Missouri Pacific; Mr. Marion B. Pierce, Counsel for the Debtor, Missouri Pacific Railroad Company; Mr. Carl O. Hoffmann, Counsel for the Continental Bank and Trust Company, Mortgage Trustee under the General Mortgage; Mr. Hugh L. M. Cole, Counsel for the Mortgage Trustee of the International-Great Northern First Mortgage, and Mr. Arthur M. Anderson, of J. P. Morgan & Company and representatives of the Bankers' Group. This letter was a joint letter, as I have stated, reading:

"I enclose herewith copy of letter of the 21st instant from Mr. Charles B. Henderson, Chairman of the Board, Reconstruction Finance Corporation, to me, requesting payment of that Corporation's claim against the Missouri Pacific Railroad Company. I enclose also copy of my acknowledgment of receipt of said letter.

Sincerely yours."

I received acknowledgments from some of these gentlemen; one or two others said nothing. Mr. Pierce acknowledged the letter, Mr. Anderson's secretary acknowledged the letter (Mr. Anderson being out of the city), and I received this acknowledgment from Mr. Kitchel:

"November 29, 1945

"I have your letter of the 26th instant enclosing copy of letter of the 21st instant from Mr. Charles B. Henderson of the Reconstruction Finance Corporation requesting payment of that Corporation's claim against the Missouri Pacific Railroad Company, together with a copy of your reply thereto.

"I note that they have put a sixty-day time limit on their offer and I hope that before taking any definite action in connection with this claim you will let us have an opportunity of discussing the matter with you. I understand from Mr. Baldwin's secretary that you are planning to be in New York next week and we can then talk the matter over.

"With kind regards, I am

Sincerely yours,

WLK/T W. LLOYD KITCHEL."

I will state in that connection, because before I get through I may refer to this again, that Mrs. Thompson and I had planned a trip to New York for personal reasons of our own and business reasons of mine, since early in November, and for the early part of December, and this last sentence in the letter refering to Mr. Baldwin's secretary refers to this, that Mr. Baldwin was in New York, evidently about this matter, and Mr. Kitchel learned from Mr. Baldwin's secretary that I was planning soon to be in New York, and hence he added this sentence, "I understand from Baldwin's secretary that you are planning to be in New York next week and we can then talk the matter over". I may refer to that in another connection, before I get through. At any rate, on November 29th I wrote Mr. Henderson a rather long letter, figuring out various bases of possible settlement; setting forth what I understood to be his proposition and what that would mean in total amount to be paid, and then I figured interest at various rates and showed how that would figure out—one at 6% to date of bankruptcy and 3-½% thereafter; one at 6% per annum to date of bankruptcy and 3-¾% thereafter; one at 6% to date of bankruptcy, 4% to the effective date

of the Plan and 3-½% thereafter, and another one at 3-¾% thereafter.

I asked him to let me know particularly whether I had correctly construed what his offer meant, and stated further, in the letter to him:

> "For your information I enclose herewith 'Missouri Pacific Railroad Company—Estimate of Cash Available and Requirements for Reorganization at December 31, 1945, under Modified I.C.C. Plan of July 4, 1944', the same being based on securities of the new company being issued as of January 1, 1943, and interest accruing thereon from that date, with appropriate allowance for interest paid. You will observe that after the necessary reserves shown thereon are taken care of, it is estimated that there will be a cash balance at December 31, 1945, of $21,994,587. If I should settle with you, there should be an adjustment on account of the elimination of your claim from the Plan requirements of $2,562,327., which, added to the $21,994,587., would give me as Trustee of the Missouri Pacific Railroad Company as of January 1st available cash of $24,556,914.
>
> "If my figures are correct, settlement with you on the basis of I. above would require $25,659,992.; under II., $24,183,802.; under III., $24,921,897.; under IV., $25,310,435.; and under V., $25,486,324.
>
> "I would have you bear in mind the Missouri Pacific's indebtedness of approximately $2,000,000. to the R.C.C. and of $5,850,000. (principal amount only) to J. P. Morgan & Co. and associates.
>
> "I will be in New York next week, arriving there Monday next, December 3rd, and will stay at the Biltmore Hotel. Will you please communicate with me there as soon as you can conveniently do so."

I received a wire from Senator Henderson while I was there verifying these figures, and concluding:

> "Our directors are unwilling to consider any basis of settlment less favorable to this Corporation than said offer."

That really disturbed me, because I had in my mind carrying on negotiations that would result in a substantial reduction of interest charges, so I called up Senator Henderson from New York and asked him "whether I was to understand his wire as intending to shut the door against any further negotiating with him. He said, 'No'." I am reading from a memorandum I made at the time, on Biltmore stationery: "That if I had anything to propose he would be glad to receive it but that the wire was intended to express the position of the Board as presently advised."

I said, "All right", that I was uncertain how to construe the last sentence of his wire, and I added that the purpose of my letter was merely to see whether we were in agreement on figures; that there are important considerations I have to bear in mind, which might affect his Board's conclusion, and that I would like him to see this matter from my standpoint. He said he would be glad to hear again from me. That was on December 5th.

I don't know what the date or the place was, but, at any rate, it was on the same occasion while I was in New York, that I had lunch with Mr. Kitchel, Mr. Stedman and Mr. McConaughy, of Mr. Kitchel's office (now a partner of Mr. Kitchel), at Mr. Kitchel's invitation, and after lunch they brought up the subject of this letter which I had sent them and asked me if I had reached any conclusion. I told them that I had, that I was definitely in favor of paying off or settling with the R.F.C. if I could make a reasonable settlement. They said that they were sorry to hear that, that they did not believe I could properly use the funds that were on hand to make that settlement. Mr. Kitchel said that their position was that they had a lien on that cash as substantially all of it represented the earnings from the property owned by the First and Refunding Mortgage as a first lien, and it would constitute a preference for me to use that cash to pay the R. F. C.

They said that they had thought of an alternative, which involved a substantial interest payment in which the R.F.C., as pledgee of the First and Refunding bonds, would share a substantial amount; that they had not worked it out definitely, but they outlined it in the rough, which I

did not, I am frank to say, understand clearly. The conversation lasted some time and at its conclusion I took issue with Mr. Kitchel to this extent: I just did not believe—I could not believe—that, considering the value of the collateral that was back of the R.F.C. claim, if I took up that claim and the Court would subrogate that to the lien of the R.F.C. on that collateral, as I thought it would do, if they had any lien—it didn't strike me that that would constitute any preference, and I was certain that it was in the best interest of the trust estate that that debt be paid. I was anxious to pay it and had been anxious for some time, unless there was some legal obstacle in the way. It has always seemed to me that you never hurt yourself by paying off debts when you have the money to do so.

At the conclusion I asked them what I might expect; whether, if I filed a petition to pay the R.F.C. they would oppose it. Mr. Stedman said that they were not in a position to answer that at the moment, because it was necessary for him to take the matter up with the members of his Group, but that they would do that and he would let me know definitely. I told him that I would like to know definitely as I had this time limit, and also that they should send me promptly, in writing, this alternative suggestion which they had made to me. They said they would do that.

That is substantially all that occurred during that conversation.

I believe it was on the 7th of January—I am quite sure it was in the first week in January—Mr. Kitchel and Mr. Stedman came here to St. Louis and we had a long conference. They gave me their final answer as to their attitude toward my paying the R.F.C., which was that they were opposed to it, that they would oppose a petition on my part to pay the R.F.C., and that they would appeal from the order if the Court should grant it. They were quite definite on that. They had promised to give me a definite answer as to that, and they proposed, as an alternative plan, that I pay to the First and Refunding bondholders seven coupons, which would amount to something like forty-five million dollars, and explained quite fully why they made that proposal. They had figures all made out showing the benefit that would accrue to the R. F. C. of some five million and odd dollars—

The Court: How much?

The Witness: $5,643,750. that the R.F.C. would have gotten, and I could afford to do that on the assumption that under the Plan, if the Plan went through—the present market conditions, the cash would not be taken but the bondholders were offered the option of taking cash or taking stock. They had considered the matter carefully and it was a very strong presentation of an alternative plan.

At the conclusion of our conference I told Mr. Stedman and Mr. Kitchel that I would not accept their plan; that I was still of the opinion that the best interests of the estate required my asking the Court for leave to pay the R.F.C. if I could make a satisfactory settlement.

Mr. Kitchel, at this conference, left with me a memorandum, I think—at any rate, he argued again that, since the First and Refunding Mortgage had a lien on this cash, a first equitable lien, that I could not properly use that cash to take up the debt of another creditor. He was so strong in his argument on that, that I asked Senator Dearmont, my counsel, and Mr. Railey, Assistant Counsel of the Trustee, to take up that matter very seriously and go into it very throughly; to go into it separately, without consultation, and see whether they would reach the same conclusion, which they did. I started to work on it.

Meanwhile, I was to be in Philadelphia before the Securities Exchange Commission and on the 16th day of January I telephoned Senator Henderson and asked for an appointment at his office. He was out and his secretary was uncertain, so that I went on to Washington and got there on the 17th day of January.

I had asked Senator Dearmont to meet me there and to bring with him the conclusion which he and Mr. Railey might reach on this question of the right to use the cash. I did not know until I met him there in Washington, what their conclusions were. I went to Washington for the definite purpose of seeing Senator Henderson and seeing if I couldn't get him to come down in his interest charges. I wanted to settle the claim; I was very anxious to do it, but I was also very anxious to settle it on as good a basis as possible. It seemed to me that the Board of the R. F.

C. might very well, for cash, agree to take a lower rate of interest.

I met Senator Dearmont in Washington and he then presented me with the opinion which he and Mr. Railey had jointly signed, in which they both reached the same conclusion, which was that the First and Refunding would have an equitable lien on this cash and that for me to use the cash to pay the R. F. C. would constitute a preference. That was a great disappointment to me; for the moment, at least, it stunned me. I thought the matter over that day.

Meanwhile, an appointment had been made for the following day, the 18th, with Senator Henderson, and it occurred to me that the best thing for me to do was to see Senator Henderson and tell him of my counsel's opinion and to say that, despite my counsel's opinion, if he would accept what the R. F. C. got under the Plan, which was six per cent. to date of bankruptcy; four per cent. to the effective date of the Plan, and the option of taking either 3½ or 3¾ per cent. bonds—the 3½% bonds were early maturity bonds, fifteen-year bonds, I believe—I assumed that they would be the bonds they would take, and if counsel for the R. F. C. did not agree with Senator Dearmont, or thought that there was some doubt about his opinion, I would come in to Court and place the matter before the Court and ask for instructions, as I was anxious to pay that debt.

He asked me if I would put that in writing when I got home and I told him I would be glad to do so, which I did. I wrote him a letter on January 21, 1946, the day I got back home. He told me to put it in the form of an answer to his letter of November 21, in which he made his proposal. On January 21st I wrote him this:

> "Answering your letter of November 21st last in which you requested that I file with the District Court a petition for authority to pay the Reconstruction Finance Corporation's claim against the Missouri Pacific Railroad Company on the basis set forth in your said letter, permit me to repeat what I said to you last Friday afternoon in our conference in your office, at which were present also Senator Dearmont, my

counsel, Mr. Fletcher, counsel for the R. F. C., and Mr. Sullivan, viz:

"That I have been advised by my said counsel, Senator Dearmont, in an opinion concurred in by Mr. Railey, assistant to counsel for trustee, (copy of which opinion, at your request, I left with Mr. Fletcher) that the Missouri Pacific First and Refunding Mortgage bondholders have an equitable lien on substantially all of the cash which I hold as trustee of the Missouri Pacific Railroad Company, Debtor, and that, therefore, for me to use such cash to discharge your claim would constitute a preference; that if Mr. Fletcher, after considering this opinion and the authorities therein set forth, does not agree with it or thinks there is serious doubt about the correctness of the conclusion therein reached and you desire the Court to pass upon the issue thus raised, I would be willing to file a petition asking the Court for advice and directions with respect to said issue, provided that you are agreeable to accepting in full discharge of your claim the principal amount with interest at six per cent. to the date of bankruptcy (April 1, 1933), four per cent. to the effective date of the Plan (January 1, 1943) and three and one-half per cent. thereafter less the amount of the payments received by you from collateral."

I might say that in this conference with Senator Henderson, at which were present Mr. Fletcher and Mr. Sullivan, both of whom are here, and Senator Dearmont and myself, I stressed the point, I thought, that it seemed to me that the R. F. C. would be doing a very reasonable thing if by making cash settlement with me they got what they would get under the plan that they had agreed to, which was six per cent. from date of bankruptcy, four per cent. to the effective date of the Plan, and either three and a half or three and three-quarters per cent. thereafter, to the date of settlement, depending upon which bonds they would take under the Plan. That seemed to me to be quite reasonable and I thought it should appeal to the R. F. C.

However, I told Senator Henderson of the opposition of the First and Refunding group, the insurance group. I

told him that I had taken the matter up and discussed it with Mr. Stedman and Mr. Kitchel, and that they were very much opposed to this use of the cash, and I told him that they would appeal from any order authorizing such use of the cash; that, while I was willing to do what I suggested—which was to take three and a half per cent. from the effective date of the Plan, with four per cent. prior to that and six per cent. to date of bankruptcy—to present the matter to the Court if Mr. Fletcher thought there was some doubt about the conclusion of my counsel. I wished that they would give serious consideration to settling on a lower interest basis rate and I suggested that if they would take, two, two and a half or three per cent. that the saving to the trust estate would be so much that it might allay opposition which otherwise might arise. I urged that strongly, hoping that we could induce the R. F. C. to take a lower rate of interest than proposed by Senator Henderson.

So, that is the way I left the matter Senator Henderson, that he would consider the matter with his Board, and meanwhile for me to put in the form of a letter what I had suggested, and I have read Your Honor the letter of January 21, 1946.

I got no response from that letter until February 27th, when I received a letter from Senator Henderson dated February 21st, but I received it on February the 27th, in which he says:

> "This will acknowledge the receipt of your letter of January 21, 1946.
>
> "Your proposal contained therein has been carefully considered by our Directors, who have concluded that the Reconstruction Finance Corporation would not be warranted in accepting settlement of its claim against the Missouri Pacific Railroad Company on any basis less favorable than that set forth in our letter of November 21, 1945 to you.
>
> "The sixty day limitation stated in our letter of November 21 has expired and this Corporation's offer set forth in said letter is hereby withdrawn and cancelled."

I received that letter on the 27th day of February, 1946. Later, on March 7th, I wrote Senator Henderson an answer:

"Yours of the 21st of February was received by me February 27th.

"In the light of Senator Wheeler's Report No. 925 to the Senate, third paragraph on page 34, is there no possibility that your Board will reconsider this matter? I wish very much that it would and that it would make me a proposition in conformity with the suggestion in said paragraph, namely, a settlement on the basis of two to two and one-half per cent.

"Would you not also be good enough to tell me, or ask Mr. Fletcher to tell me, what his conclusions are with respect to my counsel's opinion that I left with you.

"Though I have no reason to believe that your Board contemplates any foreclosure of Missouri Pacific collateral (for I think you would surely not attempt to do that without prior notice to me and order of Court), I deem it proper to direct your attention to the fact that early in these proceedings the Court entered an order restraining and enjoining all persons, firms and corporations from enforcing liens upon the estate property."

I was very hopeful that the Board of the Reconstruction Finance Corporation would reconsider the matter, but I heard nothing in answer to that prior to my going again to Washington. I was very anxious to make a settlement of this matter with the R. F. C. I wired Senator Henderson if he would not see me; he told me he could, and I went to Washington—

(At this point the Court was interrupted by other matters not relating to this hearing.)

The Court: Proceed.

The Witness: On the 1st day of April, after first making an appointment with Senator Henderson's secretary, I called on Senator Henderson and again took this matter up with him, and told him that I was very much disap-

pointed that my suggestion had not met with the approval of the Board. I said that, "I would like to know whether it is final or not, because if it is, and there is no chance of my settling with the R. F. C., then I am going to give attention to the further payment of interest and I can not pay a large amount of interest and settle with the R. F. C., too; I must know one way or the other whether they are going to settle".

I again entered into a discussion with him as to the reasonableness of our proposal; I reviewed our prior conference with him, and his letter turning down my letter, and I recall Senator Henderson then suggesting something that gave me hope, saying, "Well, we are right back now to where we started. Let us begin again".

The Court: Is that what gave you hope?

The Witness: It gave me some hope. I went on and told him—I again stressed the desirability from my standpoint of disposing of this claim of the R. F. C. and I thought the R. F. C. was asking too much interest, and I wished very much that they could see their way clear to renewing this offer, but at a lower rate of interest. And I again called attention to that paragraph in that report to the Senate of the Wheeler Committee, in which it commented on the interest that the R. F. C. was exacting and suggesting that it might be a lower rate.

Senator Henderson was very gracious and we had a pleasant conference. He told me he would let me hear from him definitely the following week, and that ended the conference.

I then called on Mr. Fletcher before leaving Washington. It developed in my conversation with Mr. Fletcher that Senator Henderson had written to me the prior week. I subsequently learned that the letter to me of March 28, came while I was in Washington. I did not know of its existence at the time I talked with Senator Henderson. In this letter of March 28th, which I found on my desk when I came home, it is stated in substance, that the Board saw no good reason for—I will read that paragraph:

"We see no good reason for settling our Missouri

Pacific loans on a lower interest basis than that applicable on other railroad and business loans, particularly since our Missouri Pacific loans are so very well secured and you hold as Trustee such a large amount of cash.

"With respect to the third paragraph of your letter, there is enclosed a copy of a memorandum of March 18, 1946, by Meade Fletcher, our Chief Railroad Counsel, from which you will note that he is of the opinion that it would be proper for the District Court, in its discretion, to approve the payment of our loans to the Missouri Pacific."

Then he says that he had no idea of foreclosing the collateral without first taking the matter up with me and the Court.

I did not know how to construe this letter when I got it, but, at any rate, according to his promise to let me hear from him, the following week I heard from Senator Henderson in a letter dated April 11, written by him, in which he says:

"You are hereby advised that this Corporation, subject to the conditions stated in the next paragraph hereof, will accept, in full settlement of its loans to Missouri Pacific Railroad Company, a cash payment equal to the principal amount of said loans, plus interest accrued on the notes evidencing said loans at the rate expressed in said notes to the date of bankruptcy (April 1, 1933) and at the rate of 4% per annum from the date of bankruptcy to the date of this Corporation's receipt of said payment, less cash payments heretofore credited by this Corporation to interest on said loans.

"The foregoing offer of this Corporation is subject to the conditions (1) that you advise us, within the next twenty days, that you are willing to accept such offer, subject to the obtaining of the necessary Court approval, and (2) that such approval be obtained and such payment be made not later than ninety days from the present date."

That was April 11th. I wrote Senator Henderson on the 15th:

"This will acknowledge receipt of yours of the 11th instant. I will give you my answer within the twenty days specified, though since your letter was not delivered until this morning, perhaps you would be willing to have both the twenty and the ninety day limitations begin today. The twenty day limitation is not so important, but the ninety days may be."

He wrote me on April 16th, in answer to that, stating:

"I note that my letter was not delivered until the morning of the 15th and you ask if I would be willing to have both the twenty and the ninety day limitations begin on that day. I see no reason why both of these limitations should not begin on April 15 and you may consider this letter as modifying my letter of April 11 in that respect."

On April 24, I wrote to Senator Henderson:

"In compliance with your condition (1) in yours of the 11th instant, permit me to advise you that I am willing to make settlement of your claim against the Missouri Pacific on the terms set forth in your said letter if the Court will so advise and direct, and that my counsel is now preparing and I hope to file tomorrow my petition as Trustee of the Missouri Pacific Railroad Company, Debtor, asking the Court's advice and directions.

"I will send you a copy of the petition as soon as it is completed."

The Court: Was that the last letter?

The Witness: That is adhering to the same position, yes, renewing the offer. My efforts were utterly unavailable in the direction of securing a lower interest rate. It was explained to me by Mr. Fletcher that that was the rate that the R. F. C. charged, the rate that they had when they settled the claims against the Milwaukee and the Rock Island, and if they settled with me on a lower basis there would be great displeasure among those sources, and, besides, it was their policy to charge that rate on all loans and they always adhere to it.

I have forgotten whether I have covered the whole matter or not.

Mr. Dearmont: I think you have covered very fully the negotiations with Senator Henderson.

The Witness: There is one thing that I believe I want to refer to. In the hearings before the Senate Committee on Interstate Commerce, on what was originally the Mahaffie Bill, now commonly referred to as the Wheeler Bill, Senator Wheeler at least three times when witnesses were testifying referred to the fact that the Missouri Pacific had not paid, or to this offer of the R. F. C. to the Missouri Pacific, and on each occasion, plainly in an effort to make it appear that I was a prejudiced trustee, unmindful in that respect of my duty and subservient to the direction of the insurance group, said, on February 28th, when Mr. Young, President of the Alleghany was testifying:

> "In November of last year I objected to the failure to pay the R. F. C. about $23,000,000. owing from Missouri Pacific. Thereupon R. F. C. wrote the trustee, Guy A. Thompson, and asked for payment. The newspapers stated at the time that the trustee went to New York to confer with the insurance group on this subject. They told him not to pay. He did not pay."

Again, when another witness was testifying on March the 4th, Senator Wheeler said:

> "In addition, there is a belief that the trustees who represent only certain creditor classes will have greater influence before the Commission"—that is, if the Plan should go back—"I call attention to the fact that R. F. C. asked Missouri Pacific for payment of its loan. The first thing we knew of newspapers carried the story that Mr. Thompson immediately got on the train and went to New York to talk with the insurance companies back there to see what he could do about paying."

On March 7th, in the hearing before Senator Wheeler's Committee, Mr. Purcell, Vice-President of Alleghany, hav-

ing stated that these trustees are under the influence of and in fact represent senior creditors, Mr. Wheeler said:

> "In the case of the Trustee of the Missouri Pacific the story is to the effect that the R. F. C. asked them to pay, and the way the story came out in the press, the Trustee went to New York to consult the institutional holders. Whether he took their advice or not I do not know. At any rate, he did not comply with the R. F. C.'s request."

In reporting this Wheeler Bill, reported by the Committee on April 11th, that Committee on Interstate Commerce, submitted the following report, and in that report it is stated, on page 52:

> "Even if the institutional bondholders were entitled to the chief value they receive in current reorganizations, the control of the railroads which are being reorganized, they do not get much less pending the completion of reorganization, since theirs has been the principal influence in the court proceedings to the present time, and there are no signs that it has diminished."

Now, Foot-note 9: "On that subject, the following may be quoted from the hearings on S. 1253," which is the last quotation which I have just read to Your Honor, and which is repeated again in the report from Senator Wheeler in submitting this bill to the Senate.

I have called attention to the fact that upon receipt of this offer from Senator Henderson I sent a joint letter to all of the parties that I named a while ago in my testimony, who were representing major interests and trustees in this reorganization. I received from Mr. Kitchel, who was one of those to whom I sent the letter, an acknowledgment of its receipt, and stating that he notes "that they have put a sixty-day time limit on their offer and I hope that before taking any definite action in connection with this claim you will let us have an opportunity of discussing the matter with you."

I have stated the circumstances under which I went to New York, and have told Your Honor in substance of my

conference in New York with Mr. Kitchel and Mr. Stedman, and of my endeavor to have them not oppose my payment, or motion to pay the R. F. C., if I should file it following the making of a satisfactory agreement of settlement with them.

When Senator Wheeler made the statement which I first quoted to Your Honor, on February 28 of this year, I had had this meeting with Mr. Stedman and Mr. Kitchel in St. Louis. They came out to see me, as I stated a while ago, and on the 7th day of January gave me a final answer as to what their attitude would be with respect to payment to the R. F. C., and proposed an alternative plan and urged it strongly.

I had turned that plan down. Of course, Mr. Wheeler didn't know anything about that. I had gone to Washington and had this conference on January the 18th with Senator Henderson, in an effort to reach an understanding with him. Meanwhile, the day before, having received this opinion from my counsel that I couldn't use the funds in this fashion, that it would constitute a preference, nevertheless, despite that advice of my counsel, as I have stated, I proposed to Senator Henderson that if he would take this amount of money in settlement of the claim, six per cent. from date of bankruptcy, four per cent. to the effective date and three and a half per cent. thereafter, that if his counsel did not agree with my counsel, and that there might be some question about the correctness of my conclusion, I would, nevertheless, present this matter to the Court, because I was very anxious to dispose of this matter. That was on the 22d of January, I think.

This first quotation from Senator Wheeler was on February 28th, the intent of which plainly was to make it appear that I was a trustee who, if not acting by direction of the insurance group, was at least unfavorably subject to its influence.

On the very day before Senator Wheeler made that statement on February 28, I had received a letter from Senator Henderson declining my proposal and withdrawing his original proposal.

I think that I have shown I have striven diligently. It has been my desire for some time to take up this claim,

provided that I could take it up on a reasonable basis, and I have striven diligently to that end, and I have had certainly not the assistance toward that end of the insurance group up to this time. I don't know what position they would take before the Court today.

The Court: The advice of your counsel then was the same as now?

The Witness: I beg your pardon?

The Court: The advice of Mr. Dearmont and Mr. Railey has not changed?

The Witness: No, sir; I don't think they have—I don't think they have.

The Court: Have you made any independent investigation of it yourself, Mr. Thompson?

The Witness: Not in the way of going to the books and looking it up, Your Honor, but I just have the feeling that it is one instance where my client and I have not been in agreement. I have felt that if this money were used to take up the claim of the R. F. C. and the First and Refunding were subrogated, provided it has a lien—assuming that the First and Refunding and General Mortgage, Little Rock, Hot Springs and Western—to the extent that any creditors of the estate have a lien upon the cash that is used to take up this claim of the R. F. C., to the extent that they have an interest in a lien on that cash they would be subrogated and if they were subrogated to the collateral that secures that debt of the R. F. C., that collateral being worth what it is today, vastly more than the money that is used in the taking up of this claim, buying the claim, I just can't understand how that is a preference. It seems to me that if it is in the interest of the estate that that be done that it should be done, and all parties, to the extent that they have liens on the money which is used in buying this claim, would be subrogated to the extent of their liens, to the lien of the R. F. C. in the collateral which is back of the debt.

The Court: You stated you are not in accord with your clients: You mean your counsel?

The Witness: I meant my counsel.

Mr. Sunderland is here; I don't know whether his answer has been filed or will be filed. At any rate, we have the bank claim here. I have forgotten the exact amount, but I have the figures here—in excess of five million dollars.

Mr. Sunderland: $5,850,000.

The Witness: Which is also abundantly secured with collateral, I think with perhaps twice as much, and it is in exactly the same class as the R. F. C.; in fact, it was classified with the R. F. C. in the classification of claims, and I think that, despite my counsel's opinion, it is advisable that that claim be taken up. If I had known at the time the petition was filed to take up the claim of the R. F. C. that it would be possible to take up the bank debt on the same basis that Your Honor would approve taking up the R. F. C. debt, I probably would have filed a petition to do so, but I had reason to believe that that was not desirable at that time.

I will say this: I believe if Your Honor would enter an order authorizing and directing me to purchase this claim of the First and Refunding on the basis proposed by the R. F. C., if you think that is a reasonable basis, if you authorized that I would make a pretty close review of my cash situation with a view of coming back with another petition asking leave to take up the bank claim on the same basis, because I think the bank debts should be treated just as the R. F. C. is treated.

That is my attitude toward that.

Mr. Dearmont: I have no further questions.

The Court: Has any other counsel any questions?

Cross Examination

By Mr. Biggs:

Q. Mr. Thompson, on January 7th, when Mr. Kitchel and Mr. Stedman were conferring with you with regard to this matter that you testified about, did they submit any memorandum to you in connection with their plan of paying seven coupons—

The Court: Doing what?

Mr. Biggs: Paying seven coupons on the First and Refunding bonds?

A. My recollection is that Mr. Kitchel submitted a memorandum opinion on this preference question—it may be that Senator Dearmont has that. You mean, as to figures?

Q. Yes.

A. I know there were a lot of figures; they had a lot of tables which we went over, but I don't think I have those.

Mr. Biggs: That is all.

Cross Examination

By Mr. Chasnoff:

Q. Mr. Thompson, in your statement that you had called the attention of Senator Henderson to various statements of the Committee investigating trusteeships, and so on, you did not mention it, but I would like to know whether you called his attention to the statement on page 34 of Report No. 929 in which it was said,

"In arranging for the payment of R. F. C. loans, a change in the rate of interest would seem to be not inappropriate. The Reconstruction Finance Corporation has been charging the railroads 4% on its loans. At the same time, the Government has been, in recent years, paying from 2 to 2½% for the long-term money it borrows and less than 2% on all its borrowings. The Government did not make loans, whether to industries or to individuals for the purpose of making a profit. It would appear to be appropriate to charge borrowers simply the rate of interest which the Government itself must pay for money, plus a sufficient amount to take care of administrative expenses and to set up reserves for any losses which the Government might have to take on loans still outstanding. If this policy be followed, it is obvious that the R. F. C. would be charging the railroads less than 4% per year. As a matter of fact, the Government has already been making substantial loans in other fields at rates considerably less than 4%"?

The Court: What is that from?

Mr. Chasnoff: From Report 929, United States Senate, 79th Congress, dated February 7th, 1946.

A. Yes, I think I read my letter to Senator Henderson in which I referred him to page—

Mr. Chasnoff: Q. That was the particular matter which you referred to at that time? A. Yes, on page 33.

Q. The only other thing I want to ask about is, have you made a computation to determine whether your funds are sufficient to pay both the bank claims and the R. F. C. on the basis now proposed?

The Court: He stated he would make a survey; he has not—

A. I haven't with the care that I propose to exercise now that I believe the bank would be willing to settle on the same basis as the R. F. C. If that is the situation then I will take another look at my cash situation. I have a feeling that I can do it.

Mr. Chasnoff: Q. That you might be able to do it? A. Yes.

Q. But you agree that paying off the R. F. C. on that basis and refusing to do it for the banks would constitute a preference? A. No.

Q. You said they are in the same class.

A. They are different debts.

Q. But they are the same class of debt. If they can be settled on the same basis, would it not be preferring one creditor— A. If I made a different kind of settlement—

The Court: One at a time.

The Witness: I think the bank would be treated exactly as the R. F. C.

Mr. Chasnoff: Q. If you make it with one and don't make it with the other you would be preferring one of the creditors? A. I think that is a different situation.

Q. How much better is this—

The Witness: If I settled with both and made a settlement on a different basis I don't think that would be—

Q. But if you undertook to settle with one and refused to settle with the other because you didn't have enough money for both. How much better—

The Court: He doesn't specialize in bankruptcy.

The Witness: I would not say so, no.

Mr. Chasnoff: Q. How much better is this proposed offer of the R. F. C. than what they would get if the Plan goes through? You offer—

The Witness: It is one-half—

Q. The R. F. C. is getting a better deal on that than they would on the Plan?

A. I think it would figure this way: This is assuming they took the three and a half per cent. bonds, they would get one-half per cent. more from the effective date of the Plan.

Q. They are getting a better cash settlement than what they would get under the Plan?

A. To that extent, one-half of one per cent. for that period.

Mr. Chasnoff: That is all.

The Court: Does any other counsel desire to question Mr. Thompson?

(No response to the Court's inquiry.)

The Court: How much more is there?

Mr. Dearmont: As far as I am concerned, I have nothing further to offer.

The Court: I have in mind the fact that counsel are here from New York and have reservations. If they are going to be able to make those trains and want to go home—

Mr. Shepley: I don't know how other counsel from other parts of the country are situated, but Mr. Sunderland is able to get a reservation on a plane to leave later. The car leaves downtown for the airport at 2:55, 3:55 daylight saving.

The Court: Do you desire to go ahead with the hearing now or complete it later?

(Here ensued discussion among Court and counsel.)

The Court: Announce a five-minute recess.

(After a five-minute recess the hearing was resumed.)

The Court: You may proceed.

Mr. Dearmont: If the Court please, I think that we have offered everything we care to offer on these motions. I do have here a telegram from Mr. Hughes, and a letter, which he asks that in his absence I read to the Court. Mr. Hughes is a member of the firm of Chadbourne, Wallace, Parke & Whiteside, and represents the Manufacturers Trust Company. If you would like to have it read at this time I will read this letter.

The Court: I want to do everything to expedite the matter.

Mr. Dearmont: If these gentlemen are ready to proceed, I am ready to proceed. I do have this letter from Mr. Hughes, which he asks that I read.

Mr. Chasnoff: I suggest that it be read, so that we will know what their attitude is.

Mr. Dearmont (reading):

"May 7, 1946.

Mr. Russell L. Dearmont,
Missouri Pacific Office Building,
St. Louis, Mo.

Dear Senator Dearmont:

We are in receipt of the following:

1. Petition of Trustee for advice and directions with respect to payment of debt due the Railroad Credit Corporation by International-Great Northern Railroad Company, Debtor.

2. Petition of Trustee for advice and directions with respect to the compromise and settlement of the claim of Reconstruction Finance Corporation against Missouri Pacific Railroad Company, Debtor.

3. Petition of Trustee for advice and directions with respect to payment of debt due the Railroad Credit Corporation by Missouri Pacific Railroad Company, Debtor.

We have given consideration to these petitions and have discussed them with Mr. Lober of the Manufacturers Trust Company, Corporate Trustee under the First and Refunding Mortgage. As it is not possible for anybody from our office to be in St. Louis at the hearing, I am writing you this letter to express our views on the above-mentioned petitions and to request that you present a copy of this letter to the Court in connection with the consideration of the petitions.

Manufacturers Trust Company, as Trustee under the First and Refunding Mortgage, does not make any objection to the repayment of the I. G. N. indebtedness to the Railroad Credit Corporation as it does not appear that the funds which will be utilized for this payment represent funds from the operation of railroad properties which are subject primarily to the lien of the First and Refunding Mortgage of the Missouri Pacific.

The petition of Mr. Thompson, as Trustee for the Missouri Pacific, relating to the payment of the R. F. C. loan contains the following statement:

> 'that substantially all of the funds now held by Trustee in behalf of said trust estate have come from the operation of the railroad properties which are subject to the liens of the aforementioned Mortgages; that if and to the extent that the terms of said Mortgages and the claims filed by said Mortgage Trustees herein create and establish liens upon all or any part of the funds proposed to be used in said compromise and settlement of the claim of the R. F. C., said mortgage creditors may be entitled to be subrogated to the extent of the funds so used, to any rights and liens held by the R. F. C. in said pledged collateral.'

The reports which the Trustee has made from time to time indicate that the most substantial part of these funds now held by the Trustee arise from operations of the property which are subject to the First and Refunding Mortgage of the Missouri Pacific as a prior lien, and that, consequently, a prior lien on these funds exists in favor of the First and Refunding Mortgage Bondholders. Payment from such funds, therefore, of the claim of the R. F. C. and similarly, the purchase of the R. F. C. claim—which might be the more desirable of the two alternatives—would constitute a preferential payment to the R. F. C. which would seem to be justified only if the terms of payment or of purchase of the R. F. C. Claim were so advantageous to the trust estate and to the First and Refunding Mortgage Bondholders that the legal objections to such preferential payment or purchase may be eliminated in the light of definite and certain advantages to the trust estate and to the First and Refunding Mortgage Bondholders. Certainly, if the Trustee's funds, arising from the operation of property subject to the prior lien of the First and Refunding Mortgage, are to be utilized to pay or acquire the R. F. C. claim, the formula of payment or acquisition should involve the preservation, in favor of the First and Refunding Mortgage, of a subrogated right in the claim and in the collateral thereto, whether such subrogation arise by payment [of] purchase. The considerations above mentioned in this paragraph are legal considerations which, it seems to us, should require, in view of the possible future of the reorganization, the continued preservation in favor of the First and Refunding Mortgage Bondholders of the present accumulated earnings of the properties which are subject to the lien of their Mortgage.

Aside from the legal desirability of retaining for the First and Refunding Mortgage bondholders the equivalent of the funds which will be diverted if payment or purchase of the R. F. C. claim is made, there are certain practical considerations which should be taken into account. One of these, of course, will be the possible depletion of cash since the date of the petitions or in the future, arising from the present coal strike and increased wage claims. All reports of railroads, which I have seen, for the first three

months of this year are discouraging and, even if the coal strike is not longer continued, the reports for several succeeding months will, undoubtedly, make pretty sour reading. Another practical consideration which should be taken into account—if the R. F. C. claim is paid or purchased—is the non-desirability of making such payment or such purchase on the basis of the interest rate contemplated by the petition, namely, 6% to April 1, 1933 and 4% thereafter. These rates are substantially in excess of the interest rates applicable to the securities which the Plan of Reorganization contemplated the R. F. C. should receive and are substantially in excess of the coupon rate on railroad bonds recently offered and, as I recall, are in excess of interest rates on at least one bond issue which the R. F. C. agreed to purchase or underwrite several years ago when *it* forced a reduction in interest rate from an underwriting house. If the R. F. C. claim is to be paid or purchased, it would seem appropriate that it be done at a substantially lower rate of interest, *as the R. F. C. would not be taking any risk on future interest or principal but at the time of such payment or purchase would receive all accumulated interest at the rate of settlement and therefore could afford to make a substantial concession.* It is my recollection that the R. F. C. has accepted the latest plan of reorganization. Whether this plan is consummated or fails, it is improbable that the R. F. C. will ever be permitted to sell out its collateral. If pending [legislature] should change the picture with respect to the method or basis of reorganization, it is also probable that security holders junior to the First and Refunding Mortgage Bonds, would find it to their advantage to provide for the payment of the R. F. C. loan and prevent an increase in the Railroad's outstanding obligations and the Railroad's interest in the collateral pledged to secure the R. F. C. loan, by financing the payment of the R. F. C. loan by a method not prejudicial to the holders of the First Refunding and Mortgage Bonds.

The same legal considerations apply with respect to the third petition, which relates to the payment or purchase of the claim of the Railroad Credit Corporation against the Missouri Pacific Railroad Company. However, in connec-

tion with this petition, the amount involved is small compared with the amount involved in the R. F. C. claim and the current interest rate on the notes to the R. C. C. is a modest one. From a practical viewpoint, therefore, both as to the amount involved in respect of payment of principal and in respect of interest rate, the payment of the R. C. C. claim is much less objectionable and some legal concessions may be made to practical considerations.

In view of the above considerations, we do not believe that the Corporate Trustee of the First and Refunding Mortgage should support or consent to the payment or purchase of either the R. F. C. claim or the R. C. C. claim. It is possible, of course, that the future action of the Corporate Trustee can be more appropriately determined when we have had an opportunity to examine a transcript of the proceedings on the hearing of the petitions, and I would therefore appreciate it very much if you would request the stenographer to send to us, at our expense, a transcript of the hearings on the above-mentioned petitions.

Very truly yours,

C. B. HUGHES."

Mr. Sunderland: If Your Honor please, as I have already indicated when I asked leave to file the Answer of those for whom I am speaking, the so-called bank secured loan group, J. P. Morgan & Company, Kuhn, Loeb and Company and Guaranty Trust Company of New York, I support the application of the Trustee in which he asks for instructions from Your Honor as to dealing with the loans of the R.F.C. and R.C.C., which loans, as I have stated, are part of Class 10 of the classification made by Your Honor.

My position is that equal treatment, if Your Honor should grant the application to deal with these loans, should be available to those for whom I speak, as members of that class.

In order to expedite the presentation of this matter I have in my Answers referred to the record where facts dealing with the classification are set forth. Reference

are made to the record, which, as I understand from Senator Dearmont's statement in the disposition of the matter this morning, is before Your Honor in this proceeding, and Senator Dearmont specifically referred to certain orders, and among those are certain of the orders that I refer to, to the extent necessary. By that I mean to the extent that he has not referred specifically to them my Answers to refer to those orders.

Just a preliminary word about the showing of these Answers and then I come to what I conceive to be the subject which may be of most help to Your Honor. My Answers not only bring the record before you specifically, but I think they show that our claims are undisputed. The character of the claims, the purpose for which the money was borrowed, and the general similarity of the claims of my clients to those of the R.F.C. and the R.C.C. is clearly shown specifically in the Supplemental Report of the Commission in Finance Docket 9919, in the Report of December 4, 1944, and I have in the Answer quoted from that Report of the Commission, which Report was the basis of their order, which order has been confirmed by this Court, and the plan therein set forth has been confirmed. I don't think it is necessary to take the time to repeat what is said there, but I submit it shows clearly that we are on exactly the same basis.

I have gone further in the Answer and I have shown the amount, the principal amount, of the total indebtedness, $5,850,000.; in Paragraph 17, I have shown the amount of interest at 6%, the amount to the date of bankruptcy, and the amount of interest at 4% from that date to June 30, 1946. I have done that because that is the proposal that is before Your Honor, that has been made by the R.F.C.

On that basis, the saving to the estate would be, if Your Honor should accord the treatment to the bank loan group that may be accorded to the R.F.C. and the R.C.C., would be one million four hundred thousand odd dollars.

The Answers have in them all of the necessary practical material to enable Your Honor, should you reach the view that these claimants must be legally, as we contend, treated on the same basis as the other members of their class, so that the Trustee could concurrently deal with these claims—

The Court: Would it be a preference, in your opinion, if the R.F.C. were paid and you were not?

Mr. Sunderland: It would.

The Court: There is no question of that in your mind?

Mr. Sunderland: No question at all.

Now I come to this question of the power of the Court on this showing of benefit to the trust estate in saving a substantial amount in the settlement of interest as against the six per cent. rate which the notes bear, and other very definite advantages.

I agree that it is necessary in this Court of equity to find advantages to the trust estate. I also agree that this money that is going to be used is money that has been impounded under the First and Refunding loan, but I believe that an impounding order of that kind must necessarily, and really does, take into account the necessary requirements of the estate, not only in the administration but in the dealing with the whole group of rights that are presented in a bankruptcy proceeding which looks ultimately to reorganization promptly and wisely and fairly, with due regard to the rights of the parties, but also with due regard to the public interest.

I have had some similar nice questions to deal with. Indeed, Your Honor will recall that I was active in the Frisco case, where we felt that the impounded income, by reason of the benefits accruing of the two characters I refer to, the private and public, and the benefit to the estate, could properly be used as they were used in making that settlement. I cover that situation, which is particularly well-known to Your Honor, in a memorandum that I file and I file the memorandum primarily for that purpose, to call that case specifically to Your Honor's attention.

In that memorandum is set forth the exercise of this general power; true, in an equity receivership, but in fundamental legal principle I make no distinction between that procedure and that under the Bankruptcy Act. There we had, as I say in my memorandum, a situation where it was clearly a question of the use of the impounded funds in paying interest to the creditors and a public interest

of having the property reorganized and gotten out of the jurisdiction of the Court. It became necessary to acquire receivers' certificates and to deal with Equipment Trust Certificates, and indeed to acquire a divisional lien. And I refer to the Seaboard case. There we had a situation of general principle similar to the one here, and the Court did order there, on his finding that there were these benefits that have been referred to, the use of the money to acquire these debts.

It seems to me that what happens here is a very simple subordination. You acquire their notes and the collateral. The Trustee substitutes cash against which are the liens as the result of cash coming from the mortgage lien—he uses that cash to acquire the notes and the collateral. Up to that point, aside from the question of the wisdom of substituting a security for cash, there is no change in the rights of those whose property provided the cash. Their prior lien under the impounding order, if we have one, immediately attaches to the notes and collateral which were acquired with the funds.

So I submit, Your Honor, provided you find, as we believe you should find, that the estate benefits in connection with the acquisition of these secured loans, that you have the power, that you have the legal right in your administration of this property to instruct your trustee to acquire the notes, buy them—not pay them—and the collateral.

Now, I am not going to quarrel with the Trustee's exhibit here. We have great confidence in your Trustee and I think he has been very helpful and forthright—much more so than I have observed in some other cases—in setting before you the whole picture of his cash situation. It is a difficult thing for a trustee to say under uncertain conditions such as we face, whether he has the cash. I wouldn't pretend to quarrel with him about his figures, nor, perhaps, since I know his fair-mindedness, with the subsequent review of the matter. But if we are to have as the result of Your Honor's disposition of this matter a treatment, let us say on the basis of the treatment that the R.F.C. and R.C.C. are prepared to accept, in view of the payments that have been made and in view of recalculating the interest on the basis of the R.F.C. and R.C.C.

proposals, it would only require some $6,469,625. to deal with our claims. I referred some time ago to the saving to the estate. We all appreciate the saving of interest and saving in connection with this plan so far as the distribution of securities and the effect on the amount of securities. Senator Dearmont brought that out—on his Exhibit 2 he has taken that into account. The adjustment with respect to the R.F.C. and R.C.C. shows the amount in the first column, dealing only with the Missouri Pacific, is increased from twenty-five million to twenty-eight million.

I think the Trustee quite properly—in relating this matter to the Missouri Pacific, has dealt with the requirements of the confirmed plan, but if the plan is carried out and the consolidations and mergers and everything is done that the Plan proposes to be done, we might well cast our eyes to the total system cash situation, which shows forty-two million plus the two million dollars that would result from adjustment of R.F.C., plus an additional amount that would result upon treating the claims on the same basis.

I also am hopeful that the Trustee in his statement that he might wish to reconsider his cash situation, that he might take into consideration—I don't quarrel with the working capital of fifteen million, but I do think that amount is affected by the reserves for deferred maintenance, land grant deductions, and so forth.

There is another little item in here. We don't know what the railroad situation is going to be; it certainly is very uncertain at the moment, but those figures take into account the payment, under the Plan, of a dividend on the preferred stock. So far as the Missouri Pacific is concerned it is $8,800,000. and the total is $10,000,000. I don't pretend to quarrel with any of these figures, but I hope that the Trustee will reconsider his cash situation. I hope that he will adhere to what I believe to be the correct position, particularly in the history of the development of our transportation. That has been twice confirmed with the Commission, twice dealt with by the Commission, and twice by this Court—that it ought not to be a matter of any great doubt that whatever treatment is given to one member of a class must be given to the others, and I think that his counsel and he might well consider this

question. I believe it to exist, and I submit that you have a problem. If you can prove that there are substantial benefits, as I think the record shows, you have the power to purchase, to use the impounded money, and that can be done without doing any inequity to any other creditor.

The Court: ————————?

Mr. Sunderland: That is an important element in your consideration of the benefits. There is no doubt about that.

All I am saying to you is that I have had occasion to deal with this matter on the basis of the proposal as to the amount that the R.F.C. and R.C.C. say they are willing to accept. I think that is a very important question.

The Court: ————————?

Mr. Sunderland: That gets into the field of policy on the part of the R.F.C.

Your Honor is going to deal with this matter on a fair and equitable basis, having the whole record before you. I am saying to Your Honor that if you should conclude that there will be benefits, that the bank creditors should be included in the treatment accorded any other members of the class.

Thank you.

GUY A. THOMPSON,

having been heretofore duly sworn, resumed the stand and testified as follows:

Mr. Thompson: I am not sure that I said it before, but I feel sure that had I known when I filed this Petition that those owning the bank debt felt about this as Mr. Sunderland has now explained to Your Honor, that I would also at the same time have filed a petition to pay the bank claim, because I—

The Court: I believe you made it plain in your statement.

Mr. Thompson (continuing): —think it could safely be done. That is my belief.

The Court: What about the statement that this payment

of interest to the R. F. C. under the suggestion contemplated would be more than they would get under the Plan?

Mr. Thompson: All I can say, Your Honor, is that I felt very strongly that it should not be. I argued that as well as I could, but Mr. Henderson and Mr. Fletcher—Mr. Fletcher is here—I just was unable to shake Senator Henderson from that position.

Mr. Fletcher can explain to you better than I can why the R. F. C. feels that it should adhere to this proposal, even though it is slightly more than they would get under the Plan.

By taking up the R. F. C. debt that bears six per cent. interest, that is the contract rate—a million and some odd thousand dollars a year—it doesn't mean that much, but it does mean a substantial saving to get rid of it.

I personally feel that it is in the interest of the entire estate to take it up even at this figure if it is absolutely necessary.

Mr. Bean: What does one-half of one per cent. amount to, Mr. Thompson?

Mr. Thompson: I haven't figured it.

Mr. Dearmont: It is in the Petition. It is about $175,000, as I recall, on each quarter of one per cent. for the period. I believe that is about right. In other words, I think they have the option to accept either 5-½% bonds, securities bearing five and a half per cent. interest, or three and a half or three and three-quarters per cent. I think with three and a half it amounts to something over $300,000.—possibly $150,000. or $160,000. * * *. You can understand that the debt is paid off, whereas if they take what they get under the Plan they take bonds that go on for years in the future and interest charges would rest against the reorganized company.

Mr. McDonald: I want to have Mr. Buckland testify to one or two things.

EDWARD G. BUCKLAND,

a witness of lawful age, being duly produced, sworn and examined, testified on behalf of The Railroad Credit Corporation as follows:

Direct Examination

By Mr. McDonald:

Q. State your name, residence, and official connection with The Railroad Credit Corporation.

A. My name is Edward G. Buckland. I live in New Haven, Connecticut. I am President of The Railroad Credit Corporation.

Q. In connection with the motion before the Court this morning, is there some slight error in the description of the collateral with respect to the International-Great Northern?

A. Yes, sir. In the petition for the direction of payment by the Missouri Pacific there is omitted a statement which I think should be there, on page 2 of the Petition:

> "The Trustee is advised and therefore states that the present value of the securities listed above is approximately $5,000,000.; and that said notes are further secured by Debtor's distributive share in the fund established under the aforesaid Marshalling and Distributing Plan."

That is not true as stated that way. It is true you put in there, subject to the prior pledge with the I. G. N.—it is quite a substantial amount, as I shall show when I come to the I. G. N. In other words, the International-Great Northern obtained from the Missouri Pacific and from the N. O. T. & M. their distributive part of the collateral for the I. G. N. loan. Now, that is shown—if it is necessary, it is shown in the printed Proof of Claim of the R. C. C. against the Missouri Pacific, on page 3875, in which occurs this language:

> "Pledge of said defendant's distributive shares in the Fund shall be established under the Marshalling and Distributing Plan, 1931, as the same may be, at any time, and from time to time, determined, subject

to pledge with said claimant as part security for the loan to International-Great Northern Railroad Company",

and, again, in Proof of Claim of R. C. C. against the I. G. N. occurs this language, on page 3881 of the Printed Record:

"Pledge of Missouri Pacific Railroad Company's distributive shares in the Fund (also pledged as part security for loans to Missouri Pacific Railroad Company) established under the Marshalling and Distributing Plan, 1931, as the same may be, at any time, and from time to time, determined."

To that extent, Your Honor—

Q. Take Exhibits 6 and 7.

A. Exhibit 6: This is the list of collateral pledged with the Railroad Credit Corporation, the security for the Missouri Pacific Railroad Company loans. In the lower right-hand corner occurs the figure $89,029. That is not pledged as security for the Missouri Pacific loan excepting as the equity in that is pledged, and inasmuch as the I. G. N. loan will take all of that it should not be there, and should be deducted. So that, the total amount which is made up by adding in that $89,000. should be deducted from the figure $4,985,602., leaving a total amount of security of $4,896,573. as the real collateral value of the collateral pledged for one million, nine, or whatever it is for the Missouri Pacific.

Q. Now Exhibit 7.

A. No; in Exhibit 8 a statement is made under the heading "Par Value Advances made by Missouri Pacific R. R. Co. $114,029", with an asterisk "Subject to prior pledge as security for Missouri Pacific Railroad Company loans". That is incorrect. That figure $114,000. which is here should not be—that should be carried out. Apparently the value of the other two pieces of collateral are carried out, in the next to the last column, but this is not carried out. It should be carried out and that figure which I deducted from the Missouri Pacific of $89,000. should be added in there making—this is important—making the total collateral pledged to secure the I. G. N. considerably in excess of the amount of the loan.

Now one thing more—I don't know whether it is pertinent, but there will be coming due, I feel confident, from these distributions so pledged a total of $92,209.11, distributed as follows: $74,445.01 Missouri Pacific; $15,595.73 I. G. N., and $2,168.37 N. O. T. & M., a total of $92,209.11, which I am confident is going to be returned in cash in the very early future if these amounts are paid, and in any event will eventually be paid, and I feel so confident of that that I am perfectly willing to deduct that $92,209.11 from the total of $397,556., and if I can receive cash from the Trustee of the remainder, $305,346.86 and retain the right to those distributive shares as they come in, he can have the rest of the collateral. I will reduce that indebtedness. Furthermore, if and when these undistributive balances exceed this amount I will give the rest of it back to him in cash. I don't want to make a profit on it, but I am anxious to liquidate it.

We started in with the idea of going five years; our charter was limited to 1937. At that time we loaned seventy-three and a half million to fifty-four railroads and have been able to save thirty-five, and we couldn't save nineteen, and this is one of them.

We are down to about three million dollars, and these are two of the railroads that constitute all but about $700,000. I really want to liquidate and get out. We only charge one per cent. interest—I am offering argument rather than testimony. There is ample security in all of this and I want to get it down where we can liquidate and be relieved of anything further with this loan.

I am ready for cross examination.

Mr. Dearmont: No questions.

At this point Mr. Pierce called the Court's attention to the Answers that he had filed on behalf of the Debtor, stating that they support the Trustee's petition and asking that he be directed to buy these claims. He also stated that he was filing the same Answers on behalf of the Protective Committee for the holders of common stock.

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At this point Mr. Pierce called the Court's attention to the Answers that he had filed on behalf of the Debtor, stating that they support the Trustee's petition and asking that he be directed to buy these claims. He also stated that he was filing the same Answers on behalf of the Protective Committee for the holders of common stock.

Mr. Thompson: Will Your Honor let me take the stand again for a moment?

The Court: Very well.

GUY A. THOMPSON,

having been heretofore duly sworn, resumed the witness stand and testified as follows:

The Witness: Mr. Sunderland is anxious to get away, and before he goes I would like to understand this: It is not clear to me whether Mr. Sunderland is objecting to Your Honor directing me, under the Petition that was filed, to make settlement with the R. F. C. unless at the same time Your Honor directs me to make settlement with the banks. I don't know whether that is precisely Mr. Sunderland's position.

Mr. Sunderland: I think I may have been at fault in not making it clear. I thought I had. I drew the prayer very carefully of my Answer, which Mr. Thompson has not had a chance to read.

The Witness: I haven't read Mr. Sunderland's Answer.

Mr. Sunderland: I believe that shows, and my statement shows, that I am not objecting to the payment of the R. F. C. and R. C. C. on the basis that this Court may authorize you to deal with them. I say, because of my being classified with them I am legally entitled to receive the same treatment. Have I made it clear?

(The last preceding statement by Mr. Sunderland was read to the witness.)

Mr. Dearmont: If the Court please, I want to suggest, although whatever pleases the Court and these other gentlemen is satisfactory to me, but the hour is 1:30 and there apparently are three or four others to be heard on this matter. I believe Mr. Chasnoff has some testimony

to offer. It seems to me we ought to have a recess before we conclude.

The Court: I didn't want to take a recess if that was going to keep counsel from getting away.

Mr. Chasnoff: The only matter in the form of testimony that I want to offer is a compilation relation to United States Government bonds issued in the years 1933 to 1945, inclusive, and maturing in 1946 and thereafter; subsequent maturities being the earliest obtainable from the issues of the year in which offered. It shows rates of interest on bids.

This table was taken from authentic sources. I should like to offer it as an exhibit. The amount at which they were offered originally is probably a matter of judicial knowledge, anyhow, but I think it is helpful to have it in this form.

(The table last offered in evidence was marked Group of Institutional Holders' Exhibit A.)

(Group of Institutional Holders Exhibit A.)

U. S. Government Bonds Issued in the Years 1933-45, Inclusive, and Maturing in 1946 and Thereafter; Subsequent Maturities Being the Earliest Obtainable From the Issues of the Year in Which Offered (Note Exception for 1933).

1933—Treasury 4¼s, due 1943-45; the longest term bond put out in this year sold for cash at 101½; yield 4.05%.

1934—Treasury 3¼s, due 1946.
Treasury 3s, due 1948.
Treasury 3¾s, due 1946.

1935—Treasury 3s, due 1948; sold under competitive bidding at 103.4; yield 2.64%.

1935—Treasury 2¾s due 1947.

1936—Treasury 2½s, due 1953
Treasury 2¼s, due 1951

1937—Treasury 2½s, due 1953.

1938—Treasury 2½s, due March, 1948, with a right value of 1 18/32; yield 2.34%
Treasury 2s, due December, 1947, with a right value of 1 12/32; yield 1.83%.

1939—Treasury 2s, due 1950

1940—Treasury 2s, due 1955.

1941—Treasury 2s, due 1950.
Treasury 2½s, due 1954
Treasury 2s, due 1955

1942—Treasury 1¾s, due 1948
Treasury 2½s, due 1968

1943—Treasury 1½s, due 1947
Treasury 2s, due 1952

1944—Treasury 1½s, due 1948

1945—Treasury 2¼s, due 1962

Mr. Griffin: I would like to ask Mr. Buckland a question.

EDWARD G. BUCKLAND,

having been heretofore duly sworn, resumed the witness stand and testified as follows:

Cross Examination

By Mr. Griffin:

Q. Mr. Buckland, your claim and what you are asking the Court to order paid is the full amount of the principal and full amount of interest— A. It is.

Q. In your case there is no compromise or reduction as in the case of the R. F. C.?

A. No, there is no question of that sort at all. The interest is so low that I didn't suppose there would be.

Mr. Griffin: That is all.

The Court: We will take a recess at this time. Announce a recess until half-past two o'clock.

At this point, at 1:40 o'clock P. M., a recess was taken until 2:30 o'clock P. M.

After recess, on May 9, 1946, at 2:30 o'clock P. M., the hearing was resumed as follows:

The Court: You may proceed.

Mr. Dearmont: I thought it might be helpful, in view of the fact that reference has been made here, and is made in the Petition, to an opinion of counsel for the Trustee, if I made a brief statement now. I should like first, however, since the question seems important and Your Honor has evidenced considerable interest in the question raised by Mr. Sunderland, and at the risk of finding myself in disagreement with everybody, the Trustee and counsel as well, to briefly discuss the issue as to whether the fact that the claims of the R. F. C., The Railroad Credit Corporation and the banks have been by order of this Court placed in the same classification, necessarily requires that if one is retired or purchased the other should be retired or purchased. I seriously question whether that is true. I think the misunderstanding or disagreement over that would be because we disagree upon what this classification amounted to.

The Act as it now stands provides with reference to classification—Section 77 (7) (c), "After Notice and Hearing, the division of creditors and stockholders into classes according to the nature of their respective claims and interests."

In other words, it simply directs that they shall be classified according to the nature of their respective claims and interests. Now, in view of what Mr. Sunderland states in his Answer and has stated, I believe, in his discussion of the subject to the Court, I want to refer to Judge Faris' opinion on that issue, which appears in Volume 7 of the Record of the Proceedings, beginning at page 3135, it being Opinion No. 234A, record page 3135. I don't want to read the whole opinion, but I thought I might briefly read excerpts from it.

"With the above contention I am constrained to agree"—that is, the original classification placed all of these claims, I believe, in separate classifications, and I believe the R. F. C. contended it was error—that they should have been put into a single class. Judge Faris stated:

"With the above contention I am constrained to agree. At the time of making the provisional classification the statute provided that the administrative judge should 'determine * * * the division of creditors and stockholders into classes according to the nature of their respective claims and interests.'

"The word 'interests' in the quoted statute would seem to have immediate reference to stockholders and not to creditors. A stockholder has an interest in a corporation, even though entitled to no specific part of it, but can hardly be said to have a claim against it; while a creditor has a claim against the corporation but can hardly be said to have an interest in it.

"So, we have left in the statute nothing as to claims when it comes to a classification, except to determine whether the claim (that is, debt, for the statute so defines a claim) of one creditor differs in its nature from the claim of another. The word 'nature' is used in no technical sense in law, if indeed it has any, but is used in its ordinary, common, vernacular, dictionary sense, wherein it means 'kind, sort, species, character' (29 Cyc. 283).

"So, if the question were asked of the R. F. C. and of Morgan and Company, 'What kind or sort of claim have you against the Debtor?' the answer must inevitably be the same from each of them, and that answer would be 'a claim or debt evidenced by short-term promissory notes, secured by pledges of collateral, which collateral consists of bonds of the Debtor and others, and of stocks of other corporations.' The fact that under the collateral in one case there are unsecured demand notes of a subsidiary of debtor, can not materially vary the answer, when the legal similarity of a note and a bond is regarded. Moreover, I think the decisive point here is not the precise kind of collateral pledged, but the fact that all of the collateral put up as a pledge is personal property, namely, commercial paper and so-called securities. Obviously, differences in the rates of interest, in their amounts, in dates of maturity, in the names of payees, and such other minor details, can not affect the 'nature,' that is, the kind of claim; otherwise, a separate class must be provided for well-nigh every secured promissory note, which would be an un-

thinkable calamity, when the object and aim of the statute is regarded."

In other words, in finally approving classification here Judge Faris goes on in his opinion to say that nothing in the classification should be construed as indicating that one class has a preference over another class, for example, It is primarily, in this case, a classification for the purpose of enabling a vote to be taken upon the Plan. Under Judge Faris' interpretation, classification was made so that each similar class of creditor or creditors having the same nature of claim should be placed in the same class.

I will be glad to supply you with a memorandum, because I think the classification is entirely different from administering an estate where class 1 must be paid first, class 2 must be paid second, and class 3 third. I think it is a different question; at least, that is my personal view and I just wanted to have that in.

Mr. Sunderland apparently wants to make some comment.

Mr. Sunderland: Your Honor, one reason why I have noted in my Answer, and I only briefly refer to it in order not to take up the time of the Court, the language of the Supplemental Order of the Commission is to show that not only were these claims, over our objection and sustained on appeal by the Circuit Court, classified with the R. F. C. and R. C. C., but every action in this long proceeding looking to reorganization has been taken with the recognition, not only as a matter of technical classification, but the actual character of the claims and their security.

May I emphasize what I am saying by reading this from my Answer:

> "J. P. Morgan and Company and affiliated banks (this is the last Report of the Commission) are, from the nature and value of the collateral security for their loans, entitled to treatment at least equivalent to that accorded to the Finance Corporation. Although the banks have signified that they would accept the terms of the compromise plan, we are of opinion and find that, to avoid unfair discrimination in view of the above improvement in the treatment

accorded the Finance Corporation, these bank creditors should receive an increase of $321,510 in their cash allotment, the resulting total being $1,480,382."

I interpolate: This whole action of the Commission was so sensitive to the fact that these bank claims were to be treated the same way that the R. F. C. and R. C. C. were that when they made an adjustment that didn't apply to the banks they leaned over backwards and said, "We must bring them up to the cash treatment given the R. F. C. and R. C. C.," and here is the reason for it:

"These loans from the Finance Corporation and the banks were made to aid the Debtor in emergencies, the proceeds were used in part at least to permit interest payments to continue to be made on the obligations of the Debtors, and the securities for the loans are of a different nature from the mortgage liens of the senior creditors of the Missouri Pacific, New Orleans, Texas and International. In our opinion these increases in cash payments to the Finance Corporation and J. P. Morgan and Company and associates, can be met out of excess cash," and so forth.

Now, that classification is given effect in the first plan. It has been acted upon throughout. There never has been any question before the Commission, and the results of the Commission's action have been approved by this Court on the basis not only of being technically, under the Bankruptcy Act, placed in the same classification, but on the basis that in every respect these claims are so similar that they were entitled to at least the same treatment accorded to the R. F. C.

The Court: In your Answer you are specifically requesting that you be accorded the same treatment?

Mr. Sunderland: Exactly.

The Court: Suppose the Court should determine that is a proper treatment, you couldn't make such an order under the notice—

Mr. Sunderland: I submit, in that connection, we can

well consider the record we have here. These petitions are petitions of Your Honor's Trustee for instructions. You have directed that notice thereof be given to all parties in interest. This hearing is had as a result of the fullest notice. Every party comes into the proceeding at this time; if they are not here, they should be here.

The reason for my filing these Answers in the definitive form that I have was to enable this Court to have before it at this time—because there is no dispute about the claims; there is no dispute about the classification; there is no dispute about the treatment as directed by the Commission and by the Court. It seems to me that you today have as sufficient power as you need in order to issue instructions to your Trustee. I submit that you have.

Mr. Dearmont: I am sure that Mr. Sunderland and the Court understand that what I said with reference to the question of classification had no reference to the dignity of the claims of the banks. It is conceded here, or perfectly clear from the record, that the bank claims as well as the claim of the R. F. C. are abundantly secured and they are very similar in nature. But I want to point out that my conclusion is that you might pay one and not pay the other without being guilty of a preference in this instance, because you are not using their money with which to pay. The money that you are using is money that, in my opinion, is subject to the equitable lien of the First and Refunding Mortgage and you are using their money to pay one or both, or either of these—

The Court: You don't think I have a right to use that money?

Mr. Dearmont: I will get into that. I think there is a grave question there, Your Honor, but I think perhaps you may, and I would like to tell you why I think that.

I want to point out that the R. F. C. has one set of collateral back of its notes; the banks have another set of collateral back of their notes. If you pay off the banks and don't pay the R. F. C. I don't think the R. F. C. has any complaint. The only possible complainant, I think, is the creditor whose money you are using to pay that off,

and it is not their money. Take the R. F. C.: They would have come here and torn down the court-house if you had taken ten million dollars that has been earned on the collateral behind the R. F. C. debt and paid it on some other debt. A creditor naturally wants to see that the income from the collateral securing its claim is not paid over to someone else.

My point is simply this: That, as far as the classification is concerned, it is not a determinative factor on this question, and I do not see that the holders have a right to complain because you take moneys of the estate produced by the property covered by the First and Refunding Mortgage to pay off one and don't pay off the other. I believe they have no complaint because you do not disturb their collateral. They still have collateral abundantly secured. Neither am I arguing that Your Honor should not pay them both. Perhaps if you have power to pay one you have power to pay both. I am not particularly nervous at this stage of the game as to whether or not there is cash to pay them both.

Now reverting just briefly to the opinion which was given to the Trustee under date of January 15, 1946, by his counsel, Mr. Railey and myself. It is true that under that date we did give him a written opinion in which we concluded, after reviewing authorities—I will be very glad to supply Your Honor with a copy of this opinion—that the bondholders secured by the Missouri Pacific Railroad Company First and Refunding Mortgage have an equitable lien upon the net income from the operation of the mortgaged property, and we advised the Trustee that substantially all of the cash which he held as Trustee of such debtor company represents income derived from the operation of said mortgaged property, and therefore it necessarily follows that any application of said funds to retirement of the claim of the R. F. C. as proposed would constitute a preference.

The term "preference" probably is a pretty strong term to use there; probably it would have been better to have said it would be unwarranted or would not be justified. However, in view of the fact that this issue had been raised, both Mr. Railey and I have given consider-

able consideration to this question, and I think, speaking for myself, and perhaps for Mr. Bailey, although he is able to express himself much better than I would be able to express it, it is our feeling that if you do direct the payment of either of these very highly secured claims, and you do so by using funds upon which we believe the First and Refunding bondholders have an equitable lien, it is subject to objection by them and if they do object Your Honor is faced, in my opinion, with a very serious question.

At this hearing it appears that no one comes forward able to speak for all the First and Refunding bondholders, perhaps, because the Institutional Group speaks only today for a relatively small percentage of the bonds, thirty-five or forty million dollars out of probably one-sixth of the bonds. In view of the fact that these bondholders are not before Your Honor, perhaps the duty rests upon Your Honor's shoulders to take care of the interest of those First and Refunding bondholders. I think it does. I think upon a proper finding by Your Honor you would be justified and probably legally to use these funds. I think you can do it only if you find it is not only in the interest of the estate, I think you must find, if you do enter such an order, that it is in the interest of the First and Refunding Mortgage bonds. I think perhaps there is a basis for Your Honor in so doing.

In order to be helpful, I might review briefly the reasons I have for coming to that conclusion. In other words, what we are doing here is really protecting an equity of redemption, and there is no doubt that in an ordinary bankruptcy proceeding the Trustee, under the safeguards of General Order No. 28, is permitted to use general creditors' cash to retire a mortgage lien and protect the equity of redemption.

For the convenient reference of the Court, we will analyze the source of this power in an ordinary liquidating bankruptcy proceeding, and then attempt to show by analogy that the same reasoning must apply in a railroad reorganization under Section 77 of the Act.

Prior to the general amendment of the Bankruptcy Laws June 22, 1938, there was no specific provision con-

ferring upon the Bankruptcy Court the power to sell property of the bankrupt free from encumbrances. Discussing this in Van Huffel vs. Harkelrods, 284 U. S. 225, 227, the Court said:

"The present Bankruptcy Act, * * * unlike the Act of 1867, contains no provision which in terms confers upon Bankruptcy Courts the power to sell property of the bankrupt free from encumbrances. We think it clear that the power was granted by implication. Like powers had long been exercised by Federal Courts sitting in equity when ordering sales by receivers or on foreclosure."

Section 70 of the Bankruptcy Act, as amended in 1938, forms the basis for the present implied authority to protect equities of redemption.

Section 70(a) provides that a Trustee shall in turn be vested by operation of law with title to the property of the bankrupt, and shall have the powers which the bankrupt might have exercised for his own benefit. Subdivision (f) of the same Section contains specific provision for the appraisal and sale of property of the bankrupt. These two provisions read together form the basis for the implied power to protect equities of redemption. Discussing this implied power, Collier, in his work on bankruptcy, Sections 70.991 (Vol. 4, p. 1619) states:

"It has been demonstrated in previous discussions that for the purpose of converting the estate into money, the Trustee or Receiver may, under direction of the Court, sell the assets of the estate either subject to or clear of liens and encumbrances. * * * As a kind of counter-part to these powers, and occasionally as a very valuable means to improve the prospects of a future disposition, the Trustee or Receiver, subject to the Court's approval, also has the power to discharge any existing mortgage, pledge, lien, or other encumbrance on property belonging to the estate. The exercise of this power of redemption, which is in essence, merely the equitable power of the bankrupt himself as transferred *ex lege* to a bankruptcy officer, presupposes the availability of funds."

The Trustee's right to redeem property and the Bankruptcy Court's power to authorize such redemption is recognized in General Order 28, which prescribes the procedure that must be followed. Such power, however, is not predicated upon General Order 28, but is implied from the general provisions of the statute. It is therefore of no consequence that General Order 28 is not applicable to a Section 77 proceeding.

In determining whether this implied power to protect equities of redemption, or in other words, pay off underlying mortgages for the benefit of the trust estate, is available in railroad reorganizations, we find the following language in Section 77 (1), Title 11, U. S. Code, Section 205:

> "In proceedings under this Section and consistent with the provisions thereof, the jurisdiction and powers of the Court, the duties of the Debtor, and the rights and liabilities of creditors, and of all persons with respect to the Debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the Debtor's petition was filed."

Construing this language in the recent case of Smith, Trustee, Hoboken Manufacturers R. R. Co. vs. Hoboken R. R. etc. Co., 14 Law Week, 4333, decided by the Supreme Court of the United States, April 29, 1946, the Court held that Section 70 (b) of the Bankruptcy Act is applicable to a reorganization under Section 77.

Section 77 contains substantially similar provisions to the provisions of Section 70 on which the implied power to protect equities of redemption is predicated. Section 77 (c) (2) in part provides:

> "The Trustee or Trustees so appointed upon filing such bond, shall have all the title and shall exercise, subject to the control of the Judge and consistent with the provisions of this Section, all of the powers of the Trustee appointed pursuant to Section 44 of this Act, or of any other Section of this Act, and, to

the extent not inconsistent with this section, if authorized by the Judge, the powers of a receiver in an equity proceeding."

Section 77 (c) (3) authorizes the issuance of Trustee's certificates of indebtedness, and Subdivision (o), which authorizes the Court in its discretion to authorize or direct sale of any part of the trust estate, corresponds to Section 70 (f) hereinabove referred to.

It therefore seems apparent that if in an ordinary bankruptcy proceeding the Trustee may be authorized to retire mortgages and to protect the equity of redemption, the same implied power exists in a 77 proceeding.

If it is conceded here that the Missouri Pacific First and Refunding bondholders have a lien upon substantially all the cash proposed to be used in the retirement of the R. F. C. debt against the estate, it is nevertheless our opinion that the Court may lawfully authorize the Trustee to retire this secured debt in order to protect the equity of redemption in the collateral which supports the R. F. C. debt, for the benefit of the trust estate if the Court finds that such action is in the interest of the trust estate generally and further finds that such action will be to the best interest of the holders of First and Refunding bonds or any other creditors having a lien upon the funds so used.

I think you may find that it is to the interest of the First and Refunding bonds to pay off the R. F. C., because I call your attention to the fact that the most valuable collateral pledged behind that mortgage is, I believe $32,750,000. First and Refunding bonds.

These proceedings have gone on now for more than thirteen years. It is conceivable that if Your Honor does not authorize and direct the payment of the claim of the R. F. C.—I don't want to put any notions in their mind at all—but it is quite conceivable, and the Trustee and his counsel are quite conscious of the possibility of the R. F. C. asking to be relieved from any restriction on the sale of the collateral, and Your Honor may find it somewhat difficult, although I would be here opposing it—you might find it difficult to avoid the entry of such an order. If such an order were entered and that collateral was sold—$32,750,000. of First and Refunding bonds was sold, plus

ing it in the hands of the public, it would clearly dilute the collateral back of the First and Refunding Mortgage probably to a much greater extent than they may feel they are being imposed upon in the use of what they call their cash in the payment of some claim other than their own.

Therefore, if the Court is convinced that it is in the interest of the estate and that it is in the interest of the First and Refunding bonds it is my judgment at this time that Your Honor may lawfully so direct the Trustee.

Mr. Bailey may have more power to elucidate, or clear himself from the onus of the opinion that we jointly have given. Probably I must accept the major responsibility for it.

(Here ensued private colloquy between Mr. Sunderland and Senator Dearmont.)

Mr. Dearmont: Mr. Sunderland has asked me if I overlooked the fact that their debt had $7,750,000. of First and Refunding bonds pledged and that is true, and the same argument that I have offered as an indication that it might be very much more to the interest of the First and Refunding to have these claims retired rather than have the collateral placed in the hands of the public applies to the debt of the R. F. C.

I think I have nothing further. I tried to make it as clear as possible, not only for the benefit of the Court but for counsel who are in this problem and might be curious as to what the views of the Trustee might be.

Mr. McPheeters: I am appearing on behalf of the Mortgage Trustee of the Committee for the Protection of the Little Rock, Hot Springs and Western bonds.

My client's position on this question of payment of the R. F. C. is in accord with that expressed by the Debtor's Trustee. We feel that from a practical standpoint, for the practical benefit of the estate, if payment is authorized on reasonable terms it will be beneficial.

We have this in mind in connection with the form of any order which might be entered—

The Court: That applies to Mr. Sunderland's claim, also?

Mr. McPheeters: I think so.

In connection with the form of any order that might be entered we are concerned with the problem of possible subrogation. The Little Rock, Hot Springs and Western is one of the three lines mentioned by Mr. Thompson this morning that has a first mortgage lien against the Debtor. We take the position that our bond issue covers earnings, and how they are to be determined would probably have to be by an accounting and to the extent of those earnings we are entitled to subrogation along with the First and Refunding and any other issues that have a first mortgage lien.

As far as the record is concerned, I should like to have it understood that the Proof of Claim of the St. Louis Union Trust Company, Trustee, is considered part of the record, of this record, and also the deed of trust.

The Court: Does anyone else desire to be heard?

Mr. Chasnoff: I represent primarily the Group of Institutional Holders of First and Refunding bonds, but also, on this particular matter that is up today, the Committee of the General Mortgage, First Mortgage.

We have not filed or thought it necessary to file an answer to the Trustee's application for instructions on this motion, for the reason that, so far as the factual statements contained in that motion are concerned, we don't controvert those. That being so, we deem a pleading to the motion unnecessary and have not filed any, but I have been asked by these two interests to communicate to the Court their views—and in part I want to use the views stated by other counsel on this, although I don't concur in the views stated—on the proposal which the Trustee presents to the Court in the motion papers with reference to a settlement of the R. F. C. claim and not a proposal with respect to the settlement of any other claim. This one motion, the R. F. C. claim, and the one involving the First and Refunding Mortgage, is the principal motion that has been discussed here.

There is no notice in this motion of the Trustee of any

consideration to a proposition to pay other claims, such as the bankers' claims. I therefore, don't agree with Mr. Sunderland's view—although I haven't discussed this with other counsel—that at this time the Court could consider, with binding effect on those who are not here and those who are here for another purpose, the question of the payment of the Morgan claim, the bank claims, because there has been no proper notice given of that.

The Court: That question raised itself in my mind.

Mr. Chasnoff: I do think this, that in considering the question of whether the Court should instruct the Trustee to settle the R. F. C. claim on the ground that has been suggested it ought to take into account the fact that it will be authorizing a settlement with one of a class of creditors and not with creditors similarly situated with respect to the nature of their claim. I agree with Senator Dearmont that that may be a matter, for instance, which Morgan and Company and the banks could not have much to say about if we were using only First and Refunding moneys for the purpose, in which they were not interested. It happens in this particular case, however, that part of their collateral consists of First and Refunding Mortgage bonds and therefore if you propose payment of the R. F. C. without a similar offer being made to them I think they are in a position, because of the lien on the First and Refunding Mortgage bonds, to urge the preference or discrimination argument as an argument against granting the Trustee's relief that he has prayed for, or suggested.

The Court: You think that would be a preference?

Mr. Chasnoff: Yes, I do. I think the claims are exactly of the same nature. They are secured by different collateral, but some collateral in each case is the same. Whether you call it a technical preference or discrimination, or a thing that the Court logically wouldn't do, doesn't make any difference. It seems to be unfair to us that the R. F. C. should tell the Court to use money and pay them off, and here is another fellow that is adequately secured, but we don't want you to pay him anything. It seems if I were a Court I wouldn't do it.

The proposal that has been made I think should be contrasted with the plan which is before the Court and under which the R. F. C. has indicated that it would accept the provisions of the Plan and in which, instead of getting cash for their entire interest they are to get certain definite securities and cash in part. I think in determining whether it is a wise thing to do to make this settlement, we ought to consider what we are giving up to make the settlement and see whether we get enough benefit out of the settlement to justify us in giving up what we do for settling with the R. F. C., which is part cash and part bonds.

Now the R. F. C. says, "Give us all cash in an amount greater than the amount under the Plan". It seems to me in view of the situation and the expense to which we have gone with respect to the Plan that has been before the Court, that the R. F. C. is asking too much for the settlement and it is a bad settlement from that standpoint. Even if they were agreeing to take all cash on the basis of six, four, and three and a half—there still would be a difference between cash and securities. Certainly, a creditor would rather have his cash and know he is paid and out of the proceeding.

Therefore, it seems to me in all fairness that if the R. F. C. wants to make a settlement of the claim they ought to make it on a fair basis, and in so doing consideration should be given to the fact that they are a semi-public institution, organized for the purpose of helping out these railroads. They have done some of that, but now when it comes to making a profit on the interest I think the Government agency ought to be satisfied with the current rate of interest that it can borrow money for, adding some small percentage to take care of losses that might result from this investment.

It is conceded in the motion papers that substantially all of the cash available for settlement of the R. F. C. claim was derived from property subject to the prior lien of the First and Refunding Mortgage. It is the view of counsel for the Group that the use of First and Refunding moneys for settlement of the R. F. C. claim constitutes a preferential payment, which is illegal.

As has been indicated, that view was shared in by Senator Dearmont and Mr. Railey, but as I understand it now there is a qualification to that in this respect, that it can not be done without the consent of the First and Refunding bondholders, but that the Court can step in and say, "I think it is better for them and I am going to make them take it, because I think it would be better for them to take that". I believe the Court should not do it. I think the Court should consult with a substantial group of holders of those bonds * * *. I think the Court should pay some attention to what a substantial group of holders think of a matter of this kind about their money with respect to which they have a lien.

So far, there has been no question raised about the lien, but I assume there will be, and since some of counsel have been pointing to specific portions of the record, I would like to point out that there was a petition filed requesting sequestration of revenues—

Mr. Dearmont: I offered that.

Mr. Chasnoff: Record page 269?

Mr. Dearmont: Yes.

Mr. Chasnoff: Your Honor also entered an order directing the keeping of appropriate records with respect to the determination of income. Record page 309 has probably also been offered, but as a matter of precaution I want to make sure it is in the record. I can not conceive that there is at this time, and in view of the state of the case, any question about the equitable lien. I have seen no denial in papers that were served on me this morning.

The Court: I do not believe we have had any discussion on that.

Mr. Chasnoff: I will not address myself to that proposition unless it is raised.

The view of the Group, and also Mr. who can not be here, is that four per cent interest from the date of the bankruptcy to the date of payment is too high. I think that my clients would probably be willing to give their consent to a settlement of the R. F. C.; I don't

think they are inherently opposed to getting the claim out of the way. I believe their opposition in this particular instance is due to the fact that with current rates, what would seem to be a fair and just rate—

(Here ensued colloquy between the Court and Mr. Fletcher.)

Mr. Chasnoff: I think it has been stated by Mr. Thompson, when on the stand, that the R. F. C. has made the statement that they have been charging four per cent. and don't want to discriminate among the various railroads.

Our view is that the payment in full in cash of more than they would get under the Plan doesn't give us a sufficient advantage to justify us in going along, and there is a difference between cash and having securities outstanding. If First and Refunding moneys are to be used to settle the R. F. C. claim there should be some substantial off-setting advantage.

It is urged, however, that we will be subrogated to the rights of the R. F. C. on the collateral which they have. It is our view that subrogation to that collateral is not a sufficient advantage and doesn't give us sufficient protection to justify us in consenting to the proposed settlement. If the Plan is approved that subrogation would have only a minor and indirect effect on the First and Refunding bonds. If the Plan should fail, the advantage which said bonds would derive from such subrogation is not a satisfactory substitute for cash, in the opinion of this Group.

It is said that at the present time the collateral has a market value largely in excess of the amount required to satisfy the claim. I have no doubt but that is so, but there is no likelihood that the present market values will ever be actually realized, because the collateral is not for sale. I feel sure that this Court will not allow it to be sold, in view of the pendency of the Plan. Much of the collateral is of a highly speculative nature and is not to be compared with the cash which would be required to discharge the R. F. C. claim.

It is urged that the alleged benefits to be derived from such subrogation is simply to say that the R. F. C. collateral should be acquired as a speculation. It is the

position of the Group that the use of moneys for such a purpose is improper. Whatever saving would be effected by the proposed settlement would be accomplished at the expense of the First and Refundings and the largest benefits of the settlement would accrue to the junior interests. Those who have heretofore advocated payment of the R. F. C. loan have suggested that the estate or its creditors are under some kind of moral obligation to the R. F. C. because of what it has done in a period of stress. We think that is untenable. There is no such provision, and the absence of such provision is a clear indication that Congress did not intend to prefer the R. F. C. over mortgage creditors. That was decided in United States vs. Guaranty Trust Company, 280 U. S. 478. I think this Court, in connection with the approval of the Plan and in analogous matters, has ruled that the advance of moneys by the R. F. C. did not put it in a position ahead of the First and Refunding bonds in this case.

Now, here are the First and Refunding bonds in a prior position. It is not proper, in our judgment, to use the moneys on which they have a lien, on the basis of the plan which is proposed. It is conceivable that the R. F. C. can change its views and offer a plan of settlement in which it would be decidedly to our interest to accept the plan. I am not authorized to say for the Group that they would accept it, but personally I feel that if the rate were somewhere around two and a half or three per cent. instead of four from date of bankruptcy there might be good ground for working out a settlement, and I should like to see this Court, in turning down this proposition if you think you should do that, indicate that if a proper rate were agreed upon in settlement, that in all likelihood there would be no difficulty with bondholders, and there would not be objections or threats of appeal, and the matter could be handled.

Mr. McDonald: You have spoken of your objection to the R.F.C. but not the R.C.C.—

Mr. Chasnoff: The rate of interest which the R.C.C. has been charging is so low that it is the opinion of the Group that it would not be reasonable to ask them to make fur-

ther concessions, and therefore I think we are not going to object to settlement with the R.C.C. We have no particular interest, since it is not our money that is being used on the third motion and we are not opposing that.

Mr. Pettus: If Your Honor please, I represent the Trustee of the International-Great Northern First Mortgage. Much that I might say as to the first two is neutral, but much that Mr. Chasnoff has said as to the lien, and so forth, and much that Senator Dearmont has said, would apply equally to our first mortgage.

As to the first lien on the property of the International-Great Northern the position we take is that that lien attaches to funds and revenue which have arisen from that property. The proposal in this case is to pay off the R.C.C. out of those funds. To do so would be to take the money over which we have a lien and use it to pay another creditor. We believe that constitutes a preference.

I should like to emphasize the difference in our case from the two cases Mr. Chasnoff covered. In our case, the collateral to which we would be relegated is clearly of no value to us. If Your Honor will look at the Petition numbered 2930, the last one, on page 1, you will see that the collateral behind the R.C.C. claim is the International-Great Northern Adjustment Bonds. Those bonds are junior to our bonds, so they couldn't add anything at all to what we now have. It means that we would be giving $390,000. over which we have a lien and in return therefor would get possibly $90,000. out of this Marshalling and Distributing distribution, and the remainder, or about $300,000., we would lose our lien on.

So, it is clearly a preference in our case and we oppose it for that reason.

Mr. Griffin: May it please the Court, I am appearing in these proceedings as counsel for William Carnegie Ewen, as Chairman, Leon D. Sterling, as Secretary, Edmund Wright and Peter B. Kassler, as a Protective Committee of International-Great Northern Railroad Company First

Mortgage Bondholders. Associated with me are Mr. Edward F. Colladay of Washington, D. C., and Mr. Kenneth McEwen of New York City. They are not, however, present in Court today.

Three petitions filed by the trustee are before the Court.

The first petition, No. 2928, asks the advice and direction of the Court with respect to the compromise and settlement of the claim of the Reconstruction Finance Corporation against the Missouri Pacific Railroad Company, Debtor.

The second petition, No. 2929, requests the advice and direction of the Court with respect to the payment of debt due The Railroad Credit Corporation by the Missouri Pacific Railroad Company, Debtor.

The third petition, No. 2930, requests the advice and direction of the Court with respect to payment of debt due The Railroad Credit Corporation by International-Great Northern Railroad Company, Debtor.

The Court has heard the arguments made by able counsel as to the first two petitions, Nos. 2928 and 2929, and I shall therefore confine my suggestions principally to the third petition, No. 2930, relating to the debt due The Railroad Credit Corporation by the International-Great Northern Railroad Company, Debtor.

At the outset, however, I wish to point out to the Court that there is a factual difference presented by the petition for the payment of the R.F.C. debt due by the Missouri Pacific and the payment of the R.C.C. debt due by the International-Great Northern Railroad Company.

The petition No. 2928 is a petition that requests the Court for advice on a compromise settlement of the claim of the Reconstruction Finance Corporation against the Missouri Pacific. The Petition No. 2930 is a petition asking the advice of the Court as to the payment in full of the R.C.C. debt due by the International-Great Northern Railroad Company.

I also call the attention of the Court to the fact that the R.F.C. debt due by the Missouri Pacific is secured by First and Refunding bonds which are the highest type of Mortgage bonds outstanding at the present time against the Missouri Pacific and that these bonds are now and have for a long time been selling at or near par so that said

First and Refunding Mortgage bonds are not only worth greatly in excess of the proposed settlement but are first liens against all of the property of the Missouri Pacific.

The counsel for the Trustee of the First Mortgage bonds of the International-Great Northern Railroad Company has presented to the Court his reasons in opposition to the payment of the R.C.C. debt by the International-Great Northern Railroad. I desire to add our suggestions to the Court as to why the payment of the R.C.C. debt by the International-Great Northern Railroad Company as proposed in the Petition No. 2930 should not be made.

We do not object, Your Honor, to the payment of the R.C.C. debt but we suggest to the Court that the method and manner of payment as proposed in the petition filed by the Trustee is not valid or lawful. The request for the payment of the R.C.C. debt is a request for payment in full with the full amount of interest and is in no sense a compromise settlement. It is also an attempt to create a preference as the I-G.N. First Mortgage bonds have a lien on the cash proposed to be used to pay the R.C.C. debt which is superior to and comes ahead of any claim that the R.C.C. may have. The R.C.C. has in fact no lien whatever upon this cash, whereas the First Mortgage bonds have a prior and practically first lien thereon under the impounding order of the Court and practically all of that cash has come from the operation of the I-G.N. property upon which our mortgage is a first lien. To take it out from under the security afforded by the impounding order in favor of the first lienor, and give it to a party having no lien thereon whatever would seem to be an unlawful preference which we must oppose.

If it is contended that the Trustee would be subrogated to the security held by the R.C.C. our answer is that by subrogation the Trustee would receive nothing superior or even compensatory to our First Mortgage estate in lieu of or in exchange for this cash. This would constitute an additional reason why the payment would be a preference against the First Mortgage bonds since the I-G.N. Adjustment bonds in the R.C.C. hands are a class junior to us and therefore legally could not be deemed to be compensatory.

It is quite a different thing to pay the R.F.C debt and

return to the Trustee of the Missouri Pacific First Mortgage bonds held as collateral to giving to the Trustee, as proposed in No. 2930, only I-G.N. Adjustment bonds junior to our First Mortgage bonds as a substitute for the cash on which our First Mortgage Bonds have a first lien.

We submit further:

"Bearing in mind the general rule, that there can be no lien upon personal property without the possession thereof", it may be held that the R.C.C. has no lien surviving bankruptcy upon the collateral in the R.F.C's possession by virtue of the anterior agreement described at the end of Paragraph 2 on page 2 of the petition in No. 2929 as "a pledge of the equity of said Debtor Company (Missouri Pacific) in and to any and all securities deposited as security with the Reconstruction Finance Corporation".

Indeed, if the Trustee's proposal as to subrogation were adopted, it might even be held that the Missouri Pacific First and Refunding Indenture Trustee came ahead of the R.C.C. in respect of the R.F.C.—held collateral to the amount of or equivalent to the payments made by the Missouri Pacific estate in settlement of the R.F.C. debt.

We offer therefore to the Court our suggestions that it would be unlawful for the Court to order the payment of the R.C.C. debt as proposed in No. 2930. We reiterate that we would like to see the R.C.C. debt paid but not at the expense of our first lien on the cash proposed to be used nor by creating a preference.

Mr. Biggs: If Your Honor please, I have a short statement I would like to make.

On behalf of Andrew W. Comstock, a holder of 5¼% Secured bonds, I urge the Court to approve payment of the claims of the R. F. C. and the R. C. C. upon the terms outlined in their offer to the Trustee. We have urged such payment for a long time. If our plea had been heeded in the first instance and our request had not met with such severe opposition, Missouri Pacific would have been able to save more than a million dollars in interest charges.

We also urge the Court to discharge the bank creditors

upon the same terms as those employed in effecting a settlement of the R. F. C. claim. This differs from the proposal made this morning by Mr. Sunderland in which, in effect, he asked that his clients receive a "[——]" covering their claim upon the same terms as those employed in settling the R. F. C. claim. As a failure to discharge the bank creditors on the identical terms and at the identical time as the R. F. C. claim could conceivably in certain circumstances operate to offend the bank creditors, a preference which Mr. Sunderland today seeks to be secured against, the practical resolution of the matter is, of course, for this Court to enter an appropriate order to direct the Trustee to discharge the claim of the banks coincidentally with the discharge of the R. F. C. and upon the same terms. We are entirely in agreement with Mr. Sunderland that ample funds are available for this purpose.

Under the circumstances we urge that payment be made at once and without any further delay.

We do not attempt at this time a full statement of the many points of issue raised by the Trustee's petition for payment of the R. F. C. and the R. C. C. claims, but we do wish to note one or two things in order to avoid adding error to error. The petition of the Trustee seems to suggest that some kind of a lien be granted to the holders of the First and Refunding Bonds as a result of the proposed payment to the R. F. C. and the R. C. C. whose collateral has a value greatly in excess of their respective claims. We wish to note that it is altogether unnecessary at this time for the Court to pass upon any of the complicated questions of fact or law which are raised by the attempt to subrogate the First and Refunding bonds to the position of the R. F. C. It is important to note that even if the First and Refunding Bondholders were entitled to any subrogation whatever, they would have the burden of affirmatively showing both the facts and the law requisite to any such conclusion. That burden they can not discharge without elaborate hearings upon the facts and a careful analysis of the legal questions. In such attempt proof of the facts and consideration of the law would inevitably postpone payment of the claims of the R. F. C. and the R. C. C. upon the terms proposed to this Court. Therefore, we urge in the paramount interest of having such payment made at the

earliest possible opportunity that this Court not enter upon an attempt to determine any such question of subrogation which may be raised by or on behalf of the First and Refunding Bondholders.

In this connection we may briefly note that in no event are the First and Refunding Bonds entitled to a lien upon all of the collateral held by the R. F. C. and the R. C. C. Indeed, the Trustee seems to recognize this fact and apparently suggests that the lien, if such there be, of the First and Refunding Bonds extends only to a portion of the Missouri Pacific cash which will be used to make payment to the R. F. C. and the R. C. C. In other words, since the fair market value of the collateral stated by the Trustee in his petition is approximately $18,000,000. in excess of the payment to be made to the R. F. C.—and this is without attributing any value to the alleged claim of MOP against the NOTM—there is no reason why the First and Refunding Bondholders should be subrogated to the position of the R. F. C. with regard to the intercompany claim of MOP against NOTM for the nearly two million of NOTM bonds which the MOP has pledged with the R. F. C. in connection with a pledge of the intercompany claim. The doctrine of marshalling which would have been available in the case of R. F. C. in any event, is most assuredly pertinent in the case of the First and Refunding Bondholders whose lien, as to which we make no admission, would not extend to more than the equivalent of a portion of the cash to be used for the proposed payment.

It is unnecessary at this time further to consider the question of the existence of the First and Refunding lien or the appropriate right of subrogation. It is sufficient for the time being and for the purpose of passing upon the petition of the Trustee to hold any question with regard to the status of the First and Refunding Bonds in abeyance until such time as there may be a full hearing on the facts and complete argument on the law. In any event the administration of the Missouri Pacific and the other debtors in these proceedings continue under the jurisdiction of this Court, which is empowered to render from time to time such orders as may be proper in the premises.

For the First and Refunding Bonds to insist at this time upon a determination of any appropriate right of sub-

rogation, is the equivalent of their opposition to any payment of the R. F. C. and the R. C. C. claim. We believe it to be of the utmost importance in the administration of bankruptcy of these debtors to discharge whenever a favorable opportunity is available the outstanding indebtedness through the use of the vast amount of surplus cash available in the hands of the Trustee.

The fact that the Court in bankruptcy may hold in abeyance chancellery questions while passing upon the crucial question before the Court has just received the commendation of the Circuit Court of Appeals for the Second Circuit, which, in an opinion, handed down on May 2nd, held, in the case of reorganization of U. S. Realty & Improvement Co. under the reorganization provisions of the bankruptcy act that the District Court is fully authorized and acted wisely in directing the payment of a very substantial claim in order that the reorganization be expedited, and the District Court at the same time reserved any jurisdiction it might then have or thereafter possess with respect to the matter. The Circuit Court of Appeals commented that such reservation of jurisdiction was most appropriate and fully justified by the Bankruptcy Act. It is, therefore, all the more true in the situation which confronts Your Honor today that this Court may order the Trustee to pay the claims of the R. F. C. and the R. C. C. and reserve the question raised about the appropriate lien or the alleged right of subrogation on the part of the First and Refunding Bondholders.

Much more might indeed be said upon this subject, but in the interest of preserving for the vast numbers of public security holders their value in these debtors, we strongly urge this Court that the action of the Trustee in recommending payment of the R. F. C. and the R. C. C. claims be approved without delay. To do otherwise would penalize Missouri Pacific and all debtor's public security holders at a time when all other railroads have been enabled substantially to reduce their debt and to reduce their annual interest charges. Bankruptcy administration should afford to public security holders no less protection than is available to them from the operation of railroads under private ownership.

Mr. Bean: If the Court please, I will be very brief * * *. What the Trustee is trying to do is for the best interest of the Debtor's estate and it is not unlawful. This controversy must come to an end sometime. Can there be any question but what it is to the best interest of the estate? I think not. There has been nothing shown here today to the contrary. It is for the benefit of everybody. It is for the benefit of the First Bondholders. Why should they complain? I think there is no ground for their complaint and I hope Your Honor will grant Mr. Thompson the authority which he asks.

Mr. McCaffery: If the Court please, I represent the Chemical Bank and Trust Company, Trustee under the Indenture securing Missouri Pacific Secured Serial bonds. As Your Honor knows, in addition to being a substantial creditor of the Missouri Pacific we hold in pledge over eighty per cent. of the stock of the N. O. T. & M., or a substantial part of the collateral which the R. F. C. has.

We support the position taken by the Bankruptcy Trustee here, that the R. F. C. loan should be paid and discharged by settlement upon reasonable terms. As has been suggested here, there may be cogent reasons why the R. F. C. should accept less than the six and four per cent. interest rates which have been offered by it. On the other hand, counsel for the R. F. C. will doubtless explain to Your Honor cogent reasons why it should not accept less than that amount. If a settlement on better terms can be arranged, we would be delighted. If, however, the R. F. C. should stand upon the offer which it has made, we are willing to go along with the judgment of the Bankruptcy Trustee, who, as we understand him, has concluded that it is financially desirable, if better terms can not be obtained, to settle upon this basis. We have no doubt of the power of this Court to authorize such a settlement, granting a reservation for equitable protection of the rights of anyone who can show that the cash that he has a lien on has been taken for the purpose. But whatever may be the lien of the First and Refunding or other interested parties in the cash, whatever protection should be given them in

the form of equitable compensation, we can not believe that they were entitled to take * * * saying that, notwithstanding the needs of this estate, you can not take our money.

In that connection, I refer to the case of Van Schaick vs. McCarthy, 116 Fed. (2d) 987—

The Court: Will you give me a memorandum of that?

Mr. McCaffery: I shall be glad to make a memorandum of the citation.

In that case, the Circuit Court of Appeals for the Tenth Circuit, over the strong objection of mortgage creditors, held that funds derived from particular mortgage districts could be taken and used to install automatic block signals and make an improvement on a line of railroad on which their mortgage was not a lien, and which was owned by a subsidiary corporation whose stock was pledged to another creditor.

The Court can use the funds and assets which it has for the benefit of the estate, making equitable compensation to anyone who has a lien upon particular cash, in recompense for having used it for that purpose. That general principle has been applied to the payment of claims in a great many cases, which I shall refer to. So, we have no doubt about the power of the Court to make such a payment, reserving general authority to make equitable compensation to anyone who can establish that his money has been used.

The petition of the Bankruptcy Trustee requests that:

> "If the Court shall advise and direct Trustee to make such settlement, that Trustee be authorized upon making said settlement to cancel the notes evidencing said debt and to receive and hold all collateral held by the R. F. C. as security therefor, subject to the lien, if any, of The Railroad Credit Corporation, and subject to such lien, if any, as the holders of Missouri Pacific Railroad Company First and Refunding Mortgage bonds and the holders of Missouri Pacific General Mortgage bonds may have or be entitled to by reason of the lien, if any, which they may have upon

the cash of the trust estate used to retire said indebtedness."

A reservation in that form or appropriate form to take * * * the Central Branch Union Pacific or Little Rock, Hot Springs and Western would be satisfactory to us.

We do strongly oppose the suggestion by Mr. Sunderland, which I understand has some other support here, that the transaction shall be cast in the form of a purchase. We do oppose the suggestion that this Court should at this time attempt to define and detail the equitable compensation which is to be made. We believe that what should be done at present is to reserve the right to make it, either in the form prayed for by the Trustee, or in some proper form. I understand that general position is supported by Mr. Dearmont, according to the statement which he made a little while ago. We feel that to adopt the suggestion of a purchase is contrary to the general method of procedure in such matters, and has been referred to by the only appellate court that has considered it, as an ineffective substitute. We also feel that in the particular case of the Missouri Pacific it would lead to wholly unnecessary complications.

In the Denver and Rio Grande Western Railroad the District Court ordered the payment, not the purchase, of the claim of The Railroad Credit Corporation.

In the Rock Island case, over objections of mortgage interests that had a lien upon the cash involved, the District Court ordered the payment, not purchase, and in the Milwaukee case the claim of the R. F. C. was paid, not purchased.

In the Missouri Pacific Your Honor has ordered the payment, not the purchase, of the underlying issues of the Iron Mountain.

In the Denver and Rio Grande there was also a proposal made that the Rio Grande Junction bonds should be retired and upon the hearing of that application representation was made that it might in some manner be better if the transaction were cast in the form of a purchase rather than an actual payment and discharge of those Junction bonds, and the Court did cast the transaction in that form. The matter went to the Circuit Court of

Appeals, and In re Denver and Rio Grande Western Railroad Company, 150 Fed. (2d) 38, the Circuit Court of Appeals for the Tenth Circuit said:

> "The Court treated the transaction as a purchase of securities rather than a payment of a debt. This is a play upon words, and, in any event, is immaterial to the issue."

I want to mention one other case, Your Honor. Mr. Sunderland referred this morning to the fact that in the Frisco Your Honor had authorized the purchase of claims of the R. F. C. and R. C. C., but I think Mr. Sunderland overlooked two things. [Frist] in the Frisco proceeding Your Honor authorized payment of the Birmingham bonds, with a general subrogation provision in the order. What was ordered as to the Birmingham bonds, which was Order No. 347, was the payment, and not the purchase of the Birmingham bonds. He overlooked also that the claims of the R. F. C. and R. C. C. in the Frisco were of a very peculiar character. That was not a situation such as there is in the case of the R. F. C. collateral here and as there usually is, tangible security or a tangible piece of railroad line which could be turned over to somebody else in which they can be given an equitable right. R. F. C. claimed an alleged right of certain security which they didn't have and their right was bound up in the manner in which their claims had arisen and the nature of those claims, so that the only way to be sure that whatever the R. F. C. and R. C. C. got—so that somebody could get a possible redistribution of those securities, was to purchase those claims. Some of their rights got mixed up with the claims themselves, and that distinguishes, I think, the Frisco case to which Mr. Sunderland referred.

I should like to point out a few complications which would arise if the suggestion were followed in this present Missouri Pacific case. In the first place, Your Honor, the proposal of retiring the R. F. C. and R. C. C. claims has been before the Court in one way or another for some time, and it was before the Interstate Commerce Commission at the time it rendered its most recent plan. The Interstate Commerce Commission plan contemplates the

possibility of additional cash payment during the period before the plan becomes effective, and it says in effect that if more cash is distributed than one would get under the plan it should be applied to reducing the most senior class of new securities issued and the aggregate amount of such new securities actually issued under the plan shall be correspondingly reduced.

That is not what would happen on purchase. If we have a retirement the plan says that the securities shall be reduced, but apparently counsel feels that something different should happen.

This plan is something which was proposed largely as a compromise plan by the First and Refunding interests themselves, and it seems to me that the plan does not directly contemplate that anybody is going to transfer notes around or purchase them. The plan contemplates retirement of certain collateral and what shall happen in that situation. How could that be applied to a purchase such as is suggested is not entirely clear, and I don't believe that any such transaction was in the mind of the Commission. Secondly, there would be some question, it seems to me, as to who was purchasing, because counsel talked about this as though the public holders of the First and Refunding bonds were entitled to all of this cash, and as though the public holders were acquiring the cash that was being used for this acquisition. Actually, the collateral of the R. F. C. includes $32,250,000. of First and Refunding bonds and they are as much entitled to part of their cash as any other holder of First and Refunding bonds. To that extent it is not the cash of public holders which is being used; it is the cash of the bonds pledged with the R. F. C., and in that sense the R. F. C. is paying off itself. How that could be worked out in terms of a purchase if this Court should make a definite order defining everybody's rights at this time, I don't know.

In the third place, it seems to me that we have an opportunity to make progress. We have a long line of fine print notes with various provisions in them about the rights of the R. F. C., and we have an opportunity to substitute for that a broad equitable reservation of Your Honor's right to give people justice for what money has been taken.

It seems to me that would facilitate the further conduct of this proceeding much more than any effort to preserve the technical fine print terms of an R. F. C. fine print note.

Your Honor may wish to take action with regard to some particular portion or item of collateral with regard to the bonds, or some of the N. O. T. & M. collateral, something will need to be done, and it may well prove that can be done much more easily with entire fairness to all parties if they would have the broad equitable reservation of the jurisdiction of Your Honor rather than the terms of some note which was made for some entirely different purpose.

We don't feel that it is the function of this Court to move the indebtedness of the estate from one creditor to another. We feel that what this Court would like to have done is to get some of the claims against the estate discharged and paid, and get the financial rehabilitation of this debtor ahead. We feel that there is now an opportunity, by the broad reservation of the right to give equitable compensation to anyone who can prove his cash has been taken, that all parties can have their rights protected, and we favor doing so.

Mr. Fletcher: If the Court please, the R.F.C. has filed its Answer to Petition 2928, requesting that Your Honor authorize and direct the Trustee of the Debtor to make the payment on the compromise basis which has been explained in this Petition.

As stated in Interstate Commerce Commission Report of January 10, 1940, 239 I.C.C., the Reconstruction Finance Corporation loans to the Debtor were made under special circumstances to aid the Debtor in emergencies. The Reports of the Commission have recognized—

The Court: Where is that, in an exhibit?

Mr. Fletcher: No, Your Honor; I didn't file any such exhibit. It is in the Commission's Report and I will be glad to send the paragraph in.

The Reports of the Commission have recognized that. The R.F.C. holds $23,134,800. of the Debtor's notes which by their terms bear interest at the rate of six per cent. per

annum, and the R.F.C. total claim against the Debtor, including full principal and interest, will be $32,167,593. as of June 30, 1946. As security for the payment of this * * * of the present value, as estimated by our Railroad Division, of $49,053,506.

The compromise to which the R.F.C. has agreed, as referred to in Paragraphs 1 and 3 of Petition No. 2928, involves the concession by the R.F.C. of interest in the amount of six million dollars. That is a very substantial concession.

The result from payment of the R.F.C. claim on a compromise basis will be of great benefit to the bankrupt estate. Furthermore, the payment of the R.F.C. claim will simplify the Debtor's corporate structure * * * enjoys a better position than the outstanding publicly held First and Refunding Mortgage bonds. As a result of this simplification the reorganization of the Debtor would be facilitated. Finally, the payment of the R.F.C. claim because of its senior security position will be fair and equitable and in accordance with the law of the land.

Reference is made to this interest rate of four per cent. which we are applying from April 1, 1933. The four per cent. interest rate is applicable to railroad loans of the R. F. C. It is applicable to business loans, to drainage and irrigation loans, for national defense, and I am informed it is generally applicable to loans to public bodies, and that has been standard for quite a few years.

As a matter of fact, when we offered to make this four per cent. rate applicable as far back as April 1, 1933—I believe we did not reduce our interest rate to four per cent. until the latter part of 1933. That has been our standard practice in these other compromises where we have—

The Court: Under this offer you have made, is that not under the plan?

Mr. Fletcher: I would not think so, Your Honor. The R.F.C. will be given a chance under the plan to elect to take the principal of this loan, a like principal amount, of twenty-five year 3-¾% bonds. Under present conditions bonds of that class, I believe, would be worth in excess of

their face amount, judging from prices of the last several months on the issues of bonds that have been brought out.

As far back as the fall of 1943, at the hearing before the Commission, it was stated that the R.F.C. would be willing as a compromise and on condition that the reorganization be completed with reasonable promptitude, to accept in satisfaction of its claim * * * the principal amount of its claim for cash in a like amount, plus a cash compromise of its unpaid interest computed at the four per cent. rate from date of bankruptcy. That was the same position taken for the past several years.

This loan is fully secured, of course, and this concession is in the amount of six million dollars.

I don't know that the R.F.C. has had it up repeatedly, but Mr. Thompson has been—I think he has been to Washington at least three times on the matter and I think he has written five or six letters over a period of five months on the subject. It has received very thorough consideration there, and what we have offered Mr. Thompson is just like we have treated everybody else. It is not different from these other reorganization settlements, where we are fully secured.

With respect to the approval of payment in this case, it is, of course,—in the various 77 reorganization proceedings there have been various cases of approval of senior claims. The R.F.C. was paid off in the Chicago, Milwaukee, St. Paul and Pacific; Chicago, Rock Island and Pacific, and in the Denver Rio Grande and Western proceeding they approved the payment of the Rio Grande Junction bonds. And there have been various other cases of that nature. In all of the cases where the railroad settled we have settled on the same basis which we offered to Mr. Thompson here.

In the Frisco I am informed that certain underlying bonds had been paid off from time to time. I was looking at the Printed Record in the Frisco proceeding and noticed that just about a year ago Your Honor approved the dissolution of an injunction which was claimed by a secured noteholder and Your Honor's dissolving of that injunction had the same result of approving payment.

Mr. McDonald: The Railroad Credit Corporation concurs in the recommendation of the Trustee. We think in passing upon the matter Your Honor can take into consideration the nature of the R.C.C. and its need of receiving prompt liquidation. It seems to me that in the case of the R.C.C. there is a substantial benefit to the Trust Estate by reason of paying it off. It is now drawing only one per cent. interest and it seems to me that that is a substantial saving to the estate.

The Court: The matter is taken as submitted. You may file a memorandum, gentlemen.

Mr. Dearmont: I think that probably some date should be fixed, so there won't be too much time lost—

The Court: What time would you suggest?

Mr. Dearmont: I think not in excess of a week.

(Here ensued discussion among the Court and counsel.)

Mr. Dearmont: The suggestion is made that no one wants to file any.

The Court: Mr. Sunderland did file a brief.

Mr. Pierce: My argument is in my Answer.

The Court: Very well; it will be taken as submitted.

Which were all of the proceedings had upon the hearing.

Petition of Trustee for Advice and Directions With Respect to the Compromise and Settlement of the Claim of the Secured Banks Against Missouri Pacific Railroad Company, Debtor.

(Petition No. 2946.)

(Filed June 3, 1946.)

Comes now Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, and respectfully states to the Court:

1. That as more fully appears from Proof of Claim No. 503 (Rec. p. 3703), duly filed in these proceedings on April 22, 1936, by J. P. Morgan & Co., on behalf of itself, Kuhn, Loeb & Co. and Guaranty Trust Company of New York, and Proof of Claim No. 524 (Rec. p. 3855), duly filed in these proceedings on May 13, 1936, by Kuhn, Loeb & Co., certain advancements were made to Debtor Company between the months of March and October, 1931, by J. P. Morgan & Co.; that pursuant to an agreement dated October 1, 1932, said loan was extended for one year to October 1, 1933, and evidenced by nine notes, payable to J. P. Morgan & Co. for the total aggregate principal amount of $5,850,000; that said loan was participated in by Kuhn, Loeb & Co. and Guaranty Trust Company of New York to the extent of $1,462,500 each; that said nine notes bear interest at the rate of 6% per annum from date and are secured by the pledge of the following collateral, to-wit:

	Market Value
114,750 shares of the Common Stock of The Texas & Pacific Railway Company	$ 7,401,375.00
$7,750,000 principal amount of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds, Series I	7,517,500.00
Total Market Value	$14,918,875.00

that the amount of said claim, with interest from January 1, 1933, to June 30, 1946, at the contract rate of 6% per annum is as follows:

Aggregate principal amount of said nine promissory notes		$5,850,000.00
Interest thereon @ 6% to June 30, 1946	$4,739,942.00	
Less: Payments received from income on collateral to date	2,568,625.00	
Balance of interest unpaid		2,171,317.00
Total Due at June 30, 1946		$8,021,317.00

2. Trustee is advised and therefore states that on or about March, 1940, J. P. Morgan & Co. Incorporated, was duly incorporated under the banking laws of the State of New York and is now a corporation, with [publically] held stock; that on or about the 1st day of April, 1940, the aforesaid notes held by J. P. Morgan & Co. and the collateral securing same were assigned to, and are now held by J. P. Morgan & Co. Incorporated.

3. That Trustee has received an offer from J. P. Morgan & Co. Incorporated, on behalf of itself and its associates holding a participating interest in said loan, to settle and compromise the aforesaid claim on the following terms, to-wit: For the principal amount of said loan, plus interest accrued on the notes evidencing same at the contract rate of 6% per annum from their date to the date of bankruptcy (April 1, 1933), and at the rate of 4% per annum from the date of bankruptcy to the date of settlement, less the amount of payments made to the holders thereof representing income from collateral held by them as security for said notes; that under said offer of settlement, the amount of unpaid interest at June 30, 1946, will amount to $620,185.00, which added to the principal amount of said debt, $5,850,000.00, makes the amount to

be paid if said offer of settlement is accepted and the transaction closed on said date, $6,470,185.00.

4. Trustee further states that settlement of said claim at June 30, 1946, for $6,470,185.00, as proposed, would be $1,551,132.00 less than the full amount of the principal and accrued interest due on said claim at said date; that said settlement would result in an annual interest saving, based on the contract rate, of $351,000.00; that it would release collateral held by claimants as security for said loan, the value of which, taken at the current market price thereof, is $14,918,875.00.

5. Trustee further states that his estimated cash and cash equivalent, after meeting the requirements for distribution under the Modified Plan of Reorganization and after deducting the amount required to acquire the claims of the Reconstruction Finance Corporation and The Railroad Credit Corporation, as directed by Orders No. 2928 and No. 2929 heretofore entered in these proceedings on May 29, 1946, are sufficient in the opinion of Trustee to permit the retirement and settlement of the claim of the Secured Banks upon the terms of their proposal as herein set forth.

6. That on June 7, 1933, Trustees of the Missouri Pacific Railroad Company First and Refunding Mortgage filed their Petition No. 44 (Rec. p. 269), in these proceedings, asserting the claim of the bonds secured by said Mortgage against said trust estate and praying, among other things, that all tolls, incomes, rents, revenues, issues and profits of the mortgaged property be impounded, segregated and sequestered for the benefit of said petitioners, as Trustees, and of the holders of said First and Refunding Bonds; that on April 24, 1936, the Corporate Trustee under the Missouri Pacific Railroad Company General Mortgage filed its Proof of Claim No. 504 (Rec. p. 3707), in behalf of the bonds secured by said Mortgage which is a lien on all security pledged under said First and Refunding Mortgage, subject only to the prior lien thereon of the First and Refunding Mortgage, and which

is in substantially the same terms and form as said First and Refunding Mortgage; that substantially all of the funds now held by Trustee in behalf of said trust estate have come from the operation of the railroad properties which are subject to the liens of the aforementioned Mortgages; that if and to the extent that the terms of said Mortgages and the claims filed by said Mortgage Trustees herein create and establish liens upon all or any part of the funds proposed to be used in said compromise and settlement of the claim of the Secured Banks, said mortgage creditors may be entitled to be subrogated to the extent of the funds so used, to any rights and liens held by the Secured Banks in said pledged collateral.

Wherefore, the premises considered, Trustee respectfully prays that an Order be duly entered herein:

(1) Advising and directing Trustee whether he shall compromise, settle and purchase the aforesaid claim of the Secured Banks against Missouri Pacific Railroad Company, Debtor, upon the following terms, to-wit: For the principal amount of said loan, plus interest accrued on the notes evidencing same at the contract rate of 6% per annum from their date to the date of bankruptcy (April 1, 1933), and at the rate of 4% per annum from the date of bankruptcy to the date of settlement, less the amount of payments made to the holders thereof representing income from collateral held by them as security for said notes.

(2) That if the Court shall advise and direct Trustee to make such settlement and purchase said notes, Trustee be authorized thereupon to receive and hold said notes and all collateral pledged as security therefor, subject to the liens, if any, of the holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds or any other mortgage creditors of said estate which they may have upon the cash of the trust estate used to compromise and settle said claim.

(3) And for such further or other authority or direc-

tion as to the Court may seem meet or proper in the premises.

GUY A. THOMPSON,
Trustee.

RUSSELL L. DEARMONT,
Counsel for Trustee.

United States of America
Eastern Judicial District of Missouri
City of St. Louis

Guy A. Thompson, being first duly sworn, deposes and states that he has read the foregoing Petition, and that the facts stated therein are true, as he verily believes.

GUY A. THOMPSON.

Subscribed and Sworn to before me this 3rd day of June, 1946.

My Commission expires March 8, 1950.

HARRIET COX,
(Seal) Notary Public.

Answer of Secured Banks to the Petition of the Trustee for Advice and Directions With Respect to Purchase of the Claim of Said Banks Against the Missouri Pacific Railroad Company.

(Filed June 21, 1946.)

Now comes J. P. Morgan & Co. Incorporated, acting for itself, Kuhn, Loeb & Co. and Guaranty Trust Company of New York, its associates, secured creditors of the Debtor above mentioned (J. P. Morgan & Co. Incorporated and its associates being hereinafter called "respondents") and, in answer to the petition (No. 2946 herein) of the Trustee for advice and directions with respect to the com-

romise and settlement of the claim of the secured banks gainst Missouri Pacific Railroad Company, Debtor, (herein alled Missouri Pacific) and respectfully alleges:

1. Respondents admit the allegations contained in said etition.

Further Answering the Said Petition Respondents Re-pectfully Allege:

2. Respondents respectfully beg leave to incorporate in is their answer to said petition all of the allegations set rth in their answer verified the 8th day of May, 1946 and ed herein to the petition of the Trustee herein No. 2928, rified April 24, 1946, on the petition of the Trustee for ad-ce in respect of the compromise and settlement of the aim of Reconstruction Finance Corporation, as if said swer were set forth herein at length.

Wherefore, respondents respectfully pray:

1. That the petitioner herein as Trustee of the property the Missouri Pacific Railroad Company be advised and rected to purchase the claim of the respondents against ssouri Pacific Railroad Company, Debtor, and the collat-l securing the same upon the following terms to wit: the principal amount of the notes evidencing said im, plus interest accrued thereon at the contract rate of per annum from their respective dates to the date of nkruptcy (April 1, 1933), and at the rate of 4% per num from said date of bankruptcy to the date of settle-nt, less the amount of payments made to the holders reof in application of income from collateral held by d holders as security for said notes, together with col-eral securing said notes;

. That said Trustee be advised and directed to pur-se said notes of the respondents, and the collateral dged to secure the same, concurrently with the purchase the claim and collateral of Reconstruction Finance Cor-ation directed to be made by this Court by order No. 3 heretofore entered in these proceedings, in order to

avoid unjust and unreasonable discrimination against the respondents and to avoid unjust and unreasonable preference of Reconstruction Finance Corporation over the respondents and of their claims; and

3. For such other and further relief as to this Court may seem just and proper in the premises.

J. P. MORGAN & CO. INCORPORATED,
Respondents,

By: ETHAN A. H. SHEPLEY,
Its Attorney.

EDWIN S. S. SUNDERLAND,
ETHAN A. H. SHEPLEY,
HARRY W. KROEGER,
Solicitors for J. P. Morgan & Co. Incorporated.

DAVIS, POLK, WARDWELL, SUNDERLAND & KIENDL,
15 Broad Street,
New York 5, N. Y.,
SHEPLEY, KROEGER, FISSE & INGAMELLS,
319 North Fourth Street,
St. Louis, Missouri,
Of Counsel for J. P. Morgan & Co. Incorporated.

United States of America,
State of Missouri
Eastern Judicial District of Missouri,
City of St. Louis. } ss.

Ethan A. H. Shepley, being duly sworn, deposes and says that he is one of counsel for J. P. Morgan & Co., Incorporated, one of the respondents above named and that he has read the foregoing answer and that the facts therein stated are true as he is informed and verily believes and that the reason why this verification is made by deponent and not by J. P. Morgan & Co., Incorporated is because J. P. Morgan & Co., Incorporated is a corpora-

tion and because neither the said corporation nor any officer thereof is within the said State or District.

ETHAN A. H. SHEPLEY.

Subscribed and sworn to before me this 21st day of June, 1946.

MIRIAM H. DEIBEL,
Notary Public.

(Seal)

My term expires July 25, 1949.

Order

With Respect to Compromise and Settlement of Claim of the Secured Banks against Missouri Pacific Railroad Company, Debtor.

(Order No. 2946.)

(Filed June 21, 1946.)

This matter having come on to be heard on this 21st day of June, 1946, upon the Petition of the Trustee of Missouri Pacific Railroad Company, Debtor, No. 2946, requesting the advice and directions of the Court with respect to the compromise and settlement of the claim of the Secured Banks (J. P. Morgan & Co. Incorporated and associates) against Missouri Pacific Railroad Company, Debtor, and the Court having heard and considered such Petition, the Answers filed by various parties in interest, the evidence adduced in regard thereto and the statements and arguments of Counsel for Trustee and interested parties, and it appearing to the Court that due notice of the time and place of the hearing on said Petition has been given as directed by Assignment of Hearing No. 2946, duly entered herein on June 3, 1946, the Court Finds:

1. That the cash resources of the Trust Estate are amply sufficient to justify and safely permit the proposed compromise and settlement of the claim of the Secured Banks.

2. That the fair market value of the collateral pledged as security for said claim is substantially in excess of the amount proposed to be paid the Secured Banks in compromise and settlement of their claim.

3. That the compromise and settlement of said claim on the terms offered by the Secured Banks as set forth in Trustee's said Petition will be in the public interest and in the best interest of said trust estate.

4. That such compromise and settlement of the claim of the Secured Banks will also be in the best interest of the Missouri Pacific First and Refunding Mortgage creditors, and all other mortgage creditors claiming a lien on the funds of the Trust Estate to be used in effecting said compromise and settlement.

Wherefore, it is ordered:

(1) That Guy A. Thompson, as Trustee, Missouri Pacific Railroad Company, Debtor, be and he hereby is authorized and directed to purchase the claim of the Secured Banks against said Debtor Company, or its estate, namely, the nine notes of said Debtor Company in the principal sum of $5,850,000.00, and the collateral presently securing the same, and to pay therefor, from any funds now or hereafter coming into his hands as Trustee of said Debtor Company, the full principal of said notes, together with interest thereon from their date to April 1, 1933, at the contract rate of 6% per annum, and with interest from April 1, 1933, to the date of consummation of said purchase at the rate of 4% per annum, less the sum of $2,568,625.00 heretofore received and applied by the Secured Banks on said claim and less any amounts that shall have been received by said Secured Banks on account of their said collateral after the date of this Order and prior to the consummation of such purchase, such sum to be paid in cash by the Trustee to J. P. Morgan & Co. Incorporated, on behalf of itself and its associates holding a participating interest in said claim, against delivery by said Secured Banks of said notes endorsed without recourse, and said collateral.

The Court expressly reserves the right to hereafter direct that said notes be cancelled and marked paid, should the Court hereafter determine that such action will be to the best interest of said Trust Estate.

(2) That the notes and collateral so acquired from the Secured Banks shall be held by Trustee for the benefit of the holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds outstanding, and for the benefit of any other creditors of said Debtor Company, to the extent of their respective interests, if any, in the cash used in the purchase of said notes and collateral as the same may appear or may be hereafter determined by the Court or any Reorganization Plan, such holders or other creditors being hereby subrogated to the interest, rights, liens, and benefits of the Secured Banks under their said claim and in and to such notes and the collateral pledged as security therefor, to the end that their respective rights and interests may be fully protected in any marshalling of the assets of the Debtor Company or under the terms of any Plan of Reorganization that may be finally confirmed in these proceedings: and the Court hereby expressly reserves jurisdiction to make from time to time such further order or orders as may be deemed necessary or appropriate to protect and enforce the rights and equities of said bondholders and such other creditors in the premises.

(3) Debtor Trustee shall report to the Court any action taken under and pursuant to this Order.

(4) If the purchase herein authorized shall not be consummated neither the Secured Banks nor any bondholder nor any other creditor to these proceedings shall be prejudiced by this Order or said Petition of the Trustee, or by any recital or provision in either, in respect of any issue arising under said claim of the Secured Banks.

GEO. H. MOORE,
Judge,
United States District Court.

Dated: June 21st, 1946.

Transcript of Evidence and Proceedings on Hearing of Petition No. 2946 of Trustee for Advice and Directions With Respect to Compromise and Settlement of Claim of Secured Banks.

District Court of the United States
in and for the
Eastern Division of the Eastern Judicial District
of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 6935.

Be It Remembered: That on June 21, 1946, during the March Term, 1946, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, there came on to be heard before the Honorable George H. Moore, Petition No. 2946 of Trustee for Advice and Directions with Respect to Compromise and Settlement of Claim of Secured Banks, and Petition No. 2947 of Trustee for Authority to Make Interest Payments on Central Branch Union Pacific First Mortgage Bonds, whereupon the following proceedings were had:

Appearances

Mr. Russell L. Dearmont and
Mr. Thomas T. Railey,
Attorneys for Trustee.

Mr. Marion B. Pierce,
Attorney for Debtor.

Mr. Jacob Chasnoff,
Attorney for Group of Institutional Investors, First and Refunding Mortgage Bonds.

Davis, Polk, Wardwell, Sunderland & Kiendl,
by Mr. James L. Homire,
and
Shepley, Kroeger, Fisse & Ingamells,
by Mr. Ethan A. H. Shepley,
Attorneys for J. P. Morgan & Company, Incorporated, and Associated Banks.

Mr. Edwin J. Bean,
Attorney for Convertible Bondholders' Group.

Mr. Everett Paul Griffin,
Attorney for Protective Committee First Mortgage Bonds International-Great Northern.

Mr. Dearmont: If Your Honor please, I should like first to take up Petition No. 2946 of Mr. Thompson, as Trustee of the Missouri Pacific Railroad Company, Debtor, in which he requests advice and directions with respect to the compromise and settlement of the claim of J. P. Morgan Company, Incorporated, and associated banks, against the Missouri Pacific.

I should like first to offer the Proof of Notice given in accordance with the order assigning this matter for hearing, with the proof of publication attached.

If Your Honor please, as stated, this is a petition for advice and direction. The debt of the Secured Banks is represented by nine promissory notes for the total principal amount of $5,850,000. These notes were executed in 1932, by the Missouri Pacific Railroad Company, payable to J. P. Morgan Company and its associates, Kuhn, Loeb Company, I believe, and the Guaranty Trust Company. On their face they bore interest at the rate of six per cent. per annum, and they are secured by $7,750,000. par value of Missouri Pacific First and Refunding bonds and by $11,475,000. of par value—

The Court: How much?

Mr. Dearmont: $11,475,000. par value, Texas & Pacific Railway Company common stock. In other words, the par value of the collateral was $19,225,000.

Your Honor will recall that in May you considered the motion of the Trustee for advice and direction with reference to the payment of the claim of the Reconstruction Finance Corporation against Debtor Company, and on May 29 an order was entered directing the Trustee to acquire or purchase on a compromise basis the claim—the notes and collateral securing same—the claim of the Re-

construction Finance Corporation against the Missouri Pacific. This is substantially in the same situation; in other words, the Trustee asks whether he shall settle this claim of the Secured Banks according to the same formula that was used in working out a settlement of the Reconstruction Finance Corporation which, briefly stated, was payment of the full principal amount of the debt, with interest from the date of the notes to March 31, 1933, the beginning of the bankruptcy period, at the contract rate of six per cent. per annum, and thereafter, to the date of settlement, at four per cent, per annum.

On the Secured Bank claims, as I stated, the principal amount of loan is $5,850,000. The interest at six per cent, on these notes, from their date to March 31, 1933, amounts to $175,018. Interest from April 1, 1933, the beginning of these proceedings, to June 30, 1946, at four per cent. amounts to $3,102,263. Those two total interest, under this formula, to June 30, 1946, amounting to $3,277,281.

There was a small amount of interest paid prior to bankruptcy and other interest credits had been entered on this claim representing interest and dividends on the pledged securities. The total amount of these payments which had been credited to interest is $2,657,096., leaving a balance of unpaid interest on this proposed compromise basis of $620,185., which, when added to the full principal of this debt, makes the total amount at which the Secured Banks are willing to settle and compromise their claim and sell same to the Trustee, at June 30, 1946, $6,470,185.

There was some quite extensive testimony given on the R.F.C. claim matter. Petition No. 2928, dealing with the financial position of the Missouri Pacific Railroad Company, Debtor, requirements under the Plan that there had to be working capital, and other testimony with reference to the financial picture, and it has been suggested by counsel here interested in the matter now before the Court, that to the extent that it may be pertinent to the issues presented on this Motion, that it may be stipulated and agreed that any of the testimony offered at the hearing on Trustee's Petition No. 2928 might be considered as having been offered in this case.

Mr. Homire: We so stipulate on behalf of the Secured Banks.

Mr. Chasnoff: That is satisfactory to the Group.

Mr. Pierce: And to the Debtor.

Mr. Dearmont: I should like to call Mr. Peet.

C. D. PEET,

a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the Trustee as follows:

Direct Examination by Mr. Dearmont:

Q. Mr. Peet, will you please state your name and your connection with the Missouri Pacific Railroad Company, Debtor, your official position?

A. My name is C. D. Peet; I am Chief Accounting and Financial Officer for Guy A. Thompson, Trustee of the Missouri Pacific Railroad Company, Debtor.

Q. Mr. Peet, I have just handed you a paper, which I will ask the reporter to mark as Trustee's Exhibit 1, which is entitled "Estimate of Cash Available and Requirements for Reorganization at June 30, 1946, under Modified I. C. C. Plan", and I will ask you whether that exhibit was prepared by you or under your direction.

A. It was prepared under my direction.

Q. Does it correctly set forth the facts with reference to the estimated cash and cash equivalent on hand in the hands of the Trustee of the Missouri Pacific Railroad Company, Debtor, at June 30, 1946?

A. Yes; based on our estimate.

Q. Does it correctly set forth the requirements under the I. C. C. plan of reorganization for Debtor Company, heretofore approved by this Court?

A. Yes, as we interpret the Plan.

Q. And does it also set forth interest that has been paid upon the Debtor Company's bonds which are credited against the requirements under the Plan? A. Yes, sir.

Q. It also sets out, does it not, certain reserves for working fund and taxes and other items listed at the bottom of the exhibit? A. Yes, sir.

Q. Mr. Peet, at the bottom of the first column, the last

figure designated as "Balance" is $25,832,320: Does that represent free cash after meeting the requirements as you interpret the Plan and reserves as set forth near the bottom of the exhibit? A. Yes, sir.

Q. This exhibit was initially prepared prior to the presentation to the Court of Trustee's Motion No. 2928, relative to the purchase of the claim of the R. F. C. against Debtor estate, and Petition No. 2929 of the Trustee for authority to purchase the claim of the Railroad Credit Corporation against the Missouri Pacific; is that not true?

A. Yes, sir.

Q. This exhibit, then, has not been reconciled to show the estimated cash balance that would be on hand after the payment of those two claims if they are ultimately paid, does it? A. No, sir.

Q. Of course, if they are paid the total amount that will be paid out will be approximately $27,967,892., will it not?

A. Yes, sir.

Q. And as a result of that payment the requirement under the Plan, as set forth on this exhibit, would be necessarily reduced; is that not true? A. Yes, sir.

Q. If the Court should authorize and direct the Trustee to acquire or purchase the claim of the Secured Banks and that claim was purchased on the terms set forth in Trustee's Motion No. 2946, there would be a further reduction of the requirements under the Plan, due to the fact that certain securities and cash coming to the Secured Banks claimants would not have to be paid out of the estate; is that correct? A. That is correct.

Q. Can you tell me how much would be added to the balance figure on the first column of this exhibit in the event that the claims of the R. F. C. and the R. C. C. against the Missouri Pacific estate are purchased, as directed by recent orders of the Court?

A. There would be added to the balance as shown on the last line of that exhibit, $2,684,000.

Q. And if the Court should direct the purchase of the claim of the Secured Banks on the compromise basis set forth in Trustee's motion which is now before the Court, there would be a further sum added to that balance, would there not? A. Yes, sir.

Q. What would that be? A. Approximately $569,320.

Q. Then if all three of these claims are purchased, the claim of the R. F. C., Railroad Credit Corporation and the claim of the Secured Banks, what is the total amount that would be added to this balance figure on Exhibit 1?

A. The additional amount would be $3,253,728.

Q. Now, in further reference to this exhibit as it appears here, I believe you stated it showed in the Missouri Pacific account, after requirements and reserves, a balance of something in excess of twenty-five million dollars?

A. Yes, sir.

Q. Included in here as a reserve, I believe, for 1943 Federal Income Taxes, is a sizable reserve, is there not?

A. Yes, something over four million dollars.

Q. And that is a reserve to take care of any additional assessment of taxes over and above that shown by the return which was filed for that year; is that not true?

A. Yes, sir. Returns for 1943 have not been audited by the Internal Revenue Department.

Q. In other words, there is no certainty that that four million dollars will have to be applied to the payment of taxes for that year?

A. No, sir; not until our return has been examined.

Q. On the basis of the return as filed, none of it would be used if it should be approved? A. That is correct.

Q. There is an item of reserve of fifteen million dollars for working fund, is that correct? A. Yes, sir.

Q. And there is an item of two million dollars for reorganization expenses, is that correct? A. Yes, sir.

Q. That two million dollars reserve will not have to be paid out at this time? A. No, sir.

Q. It is placed there to meet the reorganization expenses that may be charged against the estate subsequently at the close of the proceeding; is that correct?

A. Yes, and it is purely an estimate. I might say there is one other item in this statement that should be called attention to at this time and that is the Sinking Fund requirement on the new First Mortgage bonds to be issued under the Plan. That amounts to $1,069,000., and I am not sure in my mind that, if the Plan is consummated, that that requirement is necessary. In reading the Plan, it pro-

vides for the requirement in advance of consummation of the Plan that certain prior obligations would be applied to sinking fund requirements under the Plan and I assume in view of payment of the River and Gulf Divisions First Mortgage, that we have met the sinking fund provision for First Mortgage bonds provided in the Plan, so I have not been able to clear up that point. I put it in here as a requirement, but I am not sure that it is necessary. That is a legal question.

Q. But there is the possibility?

A. We may have overstated our requirements by that $1,069,000.

Q. It is also true that in the requirements you have stated a certain sum as representing dividends on preferred stock of the new company, have you not?

A. Yes, sir.

Q. Of course, they will not be paid unless declared by the Board of Directors of the new company; is that true?

A. Yes, sir.

Q. So it is possible that the statement of requirements—it is possible that that might not be as large in any future year, which you could determine at this time?

A. We have endeavored in this statement to reflect all actual, as well as contingent, liabilities.

Q. I have handed you a paper marked Trustee's Exhibit No. 2, which is entitled, "Statement showing amount required to settle Claim of Secured Banks at June 30, 1946, with Interest at 6% to date of Bankruptcy, April 1, 1933, and 4% thereafter and List of Collateral Pledged": Did you prepare, or have this exhibit prepared under your direction? A. Yes, sir; prepared under my direction.

Q. And it sets forth the amount necessary to purchase or settle the claim of the Secured Banks at June 30, 1946, on the basis of six per cent. interest to March 31, 1933, and four per cent. thereafter, to June 30, 1946; is that correct?

A. Yes, sir.

Q. What is the total amount due after giving credit to all interest heretofore paid and applied to interest on this claim?

A. The total amount of principal and interest due after application of payments heretofore made, as of June 30, 1946, is $6,470,185.

Q. On the right-hand bottom corner of this exhibit under "Estimated Value" you have "Market Quotation" and "Market Value" opposite the two types of collateral pledged behind this loan, one, Missouri Pacific First and Refunding bonds and the other Texas & Pacific Railway Company Common Stock: Will you just state how you got these market values?

A. It was either reported in the Wall Street Journal or the Financial Chronicle.

Q. As of May 29? A. As of those dates.

Q. The market value on that date of the collateral held back of these notes is in what amount?

A. On the Missouri Pacific Railroad Company First and Refunding bonds, quoted at 97 on May 29, total amount, $7,517,500.

On the Texas & Pacific Railway Company Common Stock, quoted at 64½ on the same date, the value was $7,401,375., a total of $14,918,875.

Mr. Dearmont: I think that is all.

Mr. Homire: No cross examination, Your Honor.

Mr. Chasnoff: No cross examination.

Mr. Dearmont: I think I have nothing further to offer, if Your Honor please.

Mr. Thompson: Just a moment.

(Here ensued private colloquy between Mr. Thompson and Mr. Dearmont.)

Mr. Dearmont: I will call the Trustee, Mr. Thompson.

GUY A. THOMPSON,

a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the Trustee as follows:

Direct Examination by Mr. Dearmont:

Q. Please state your name and official position with the Missouri Pacific Railroad Company, Debtor.

A. Guy A. Thompson; Trustee of the Missouri Pacific Railroad Company, Debtor.

Q. Mr. Thompson, you are familiar with Petition No. 2496 now being considered by the Court? A. Yes, sir.

Q. It asks advice and direction of the Court with reference to the purchase of the claim evidenced by notes secured by collateral held by J. P. Morgan, Incorporated, and associates?

A. I didn't get the first part of your question.

(Question read to the witness.)

A. Yes, sir.

Q. Before the filing of this petition did you contact representatives of the Secured Banks in an attempt to secure an offer of settlement of this claim from them?

A. I did.

Q. I think you might just state in your own words what you did in attempting to secure a satisfactory compromise offer of settlement of this claim through purchase.

A. I think it was the day that His Honor entered the order authorizing settlement of the R. F. C. claim—

Q. May 29, 1946?

A. It was either that day or the day that His Honor called you and asked you to prepare an order—I can't recall which day it was— that I talked to Mr. Sunderland, Mr. Edwin S. S. Sunderland, a member of the firm of Davis, Polk, Wardwell, Sunderland and Kiendl of New York, who represented the bank debt, and told him either that His Honor had entered the order to pay the R. F. C., or had instructed the preparation of the order, and that I would be interested to know what kind of settlement I could make with the banks. He said that he would take it up with the banks and would let me hear from him. Later, he did let me hear from him and told me that the banks would—I had expressed in my talk with him the hope that the banks would take less and settle on a lower interest basis than the R. F. C. When Mr. Sunderland called me he told me that the banks would be agreeable to settling on the same basis as the R. F. C.; that they did not feel that they should, or that it would be wise for them to settle on a lesser basis of interest, and that they

were legally entitled, in his judgment, to be treated precisely the same as the R. F. C. was treated, and I told him that I would file a petition asking for the advice and direction of the Court as to settlement on that basis. I at once asked you to draft the petition which is now before the Court.

Q. You have no question in your mind about the fact that the market value of the collateral behind this claim is substantially in excess of the amount which they offered to sell it to you at?

A. No. I think the value is at least the value testified to by Mr. Peet—perhaps a little more than that at present —approximately fifteen million dollars. Furthermore, this means a saving of interest of a certain amount, which I don't know whether you specified or not.

Q. I think it is set out in the Petition. I wrote it some time ago.

A. That bears six per cent., and at June 1st the interest would be one and a half million dollars.

Q. This difference between the contract rate of six per cent. and four per cent. is approximately one and a half million dollars?

A. Saving in interest of one and a half million and the acquisition of these securities worth fifteen million it seems to me is greatly in the interest of the Trust Estate, of the First and Refunding bonds, if they have a lien on the cash that is used to settle.

Q. Have you any question as to the financial ability of the Trust Estate to expend the sum of $6,470,185. in acquiring this claim and collateral securing same?

A. No, I haven't. I think the Trust Estate is amply able to pay both the R. F. C. and the bank claim.

Mr. Dearmont: I think that is all, unless you have some other statement you would like to make.

The Witness: I have not.

Mr. Dearmont: I might ask you one other question. I think since we put in the record of the hearing on the motion with respect to the R. F. C. claim it is probably in, but it is a fact, is it not, that prior to filing the motion

for advice and direction relative to the settlement of the R. F. C. claim you did negotiate with the Secured Banks for a compromise and settlement of their claim also?

A. Yes, I did. Before I filed my petition in the R. F. C. matter and before negotiations closed with the R. F. C., I got in touch with Mr. Arthur Anderson, of J. P. Morgan and Company, and told him of my negotiations with the R. F. C., and that I would like him to take up with his associate banks the matter of settling the bank claim and to make me a proposition. He told me that he would be glad to do that, which he did do and later called me and told me that they felt, in view of the fact that I should—in my conversation with Mr. Anderson I told him of the opinion that I had from you and Mr. Railey, that it would be a preference for me to use the cash on hand to pay the R. F. C., and I said, "Of course, the opinion would be the same with respect to the bank claims and I will have to lay that opinion before the Court, with my own statement that I don't approve of it" and "I don't know what the Court will do with it, of course".

So, Mr. Anderson, when he called me back, said that in view of the fact that there is no certainty of its legal situation they were very hesitant and, in fact, didn't want to make a proposition to me, fearing that possibly the Court might hold that I had no right to settle with the banks, and if the plan came back from the Commission again, the fact that they had made a certain proposition might prejudice them in the consideration of allocation of securities under a new plan.

So, that was all there was to that, and I went ahead with the petition with respect to the R. F. C. and said nothing further to the banks until the conversation that I testified to a while ago, that I had with Mr. Sunderland, following the Court's conclusion with respect to the R. F. C. claim.

Mr. Dearmont: I should like to offer Trustee's Exhibits 1 and 2, identified by Mr. Peet.

Trustee's Ex
In the District Court of the Unit
Eastern Judicial Distr
In the Matter of Missouri Pacific
In Proceedings for the Reorganiza

Missouri Paci

Estimate of Cash Available and Requirement
Under Modified I

(Based on Securities of new company being is
accruing thereon from that date with
currently bei

Estimated Cash and Cash Equivalent as of June 30, 1946						
Amounts on deposit with various Trustees to be returned to Reorganized C mated)						
Estimated Reserves as of June 30, 1946						
Special Deposits—for Deferred Maintenance						
" " —for Anticipated Land Grant Deductions from U. S. Gov						
Total						
Requirements Under I. C. C. Plan						
Cash to be paid bondholders along with new securities						
Interest on New First Mortgage Bonds:						
Series "A" 3½%	$ 31,471,800	1/1/43	to	6/30/46	3½ Years	
" "C" 4%	121,477,030	"	to	"	3½ "	
New First Mortgage Sinking Fund ¼%	$152,948,830	1/1/43	to	6/30/46		
Interest and Sinking Fund on General Mortgage Bonds:						
Series "A" Interest 4½%	$120,676,327	1/1/43	to	6/30/46	3½	
" "A" Sinking Fund ½%	120,676,327	"	to	"	3½	
" "B" Interest 5%	38,498,745	"	to	"	3½	
" "B" Sinking Fund ½%	38,498,745	"	to	"	3½	
Dividends on Preferred Stock	57,659,688	"	to	"	3½	
Interest on Plaza-Olive Bldg. 1st Mtge. Bonds 3%	$527,000	1/1 to 6/				
Total Requirements						
Less Interest Paid:						
Court Order 2370	Paid—April 1944	(Mo. Pac. 1st & Ref. Mtge. Bonds)				
" " 2371	" " "	(N. O. T. & M. 1st Mtge. & Income				
" " 2372	" " "	(I-G. N. 1st Mtge. Bonds)				
" " 2577	" Dec. "	(Mo. Pac. 1st & Ref. Mtge. Bonds)				
" " 2578	" " "	(N. O. T. & M. 1st Mtge. & Income				
" " 2579	" " "	(I-G. N. 1st Mtge. Bonds)				
" " 2606	" " "	(C. B. U. P. 1st Mtge. Bonds)				
" " 2789	" Sept. 1945	(Mo. Pac. 1st & Ref. Mtge. Bonds)				
" " 2791	" " "	(I-G. N. 1st Mtge. Bonds)				
" " 2792	" " "	(C. B. U. P. 1st Mtge. Bonds)				
" " 2793	" " "	(Cairo & Thebes 1st Mtge. Bonds)				
" " 2790	" Dec. "	(N. O. T. & M. 1st Mtge. & Income				
" " 2790	" Apr. 1946	(N. O. T. & M. 1st Mtge. Pledged B				
Misel. Interest & Dividends retained by R. F. C., J. P. Morgan and Railroad C						
R. F. C.						
J. P. Morgan						
Railroad Credit Corporation						
Total Interest Paid						

Trustee's Exhibit 1.

**In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6935**

Missouri Pacific Lines

**Estimate of Cash Available and Requirements for Reorganization at June 30, 1946
Under Modified I. C. C. Plan**

(Based on Securities of new company being issued as of January 1, 1943, and Interest accruing thereon from that date with appropriate allowance for Interest currently being paid)

	Missouri Pacific	Gulf Coast Lines	International-Great Northern	Total
Estimated Cash and Cash Equivalent as of June 30, 1946	$ 84,804,000	$ 20,708,000	$ 12,008,000	$117,520,000
Amounts on deposit with various Trustees to be returned to Reorganized Company (Estimated)	9,229,000	492,000	728,000	10,449,000
Estimated Reserves as of June 30, 1946				
Special Deposits—for Deferred Maintenance	3,610,000	386,000	394,000	4,390,000
" " —for Anticipated Land Grant Deductions from U. S. Government Bills	5,250,000	465,000	465,000	6,180,000
Total	$102,893,000	$ 22,051,000	$ 13,595,000	$138,539,000
Requirements Under I. C. C. Plan				
Cash to be paid bondholders along with new securities	$ 23,058,817	$ 3,611,899	$ 3,662,901	$ 30,333,617
Interest on New First Mortgage Bonds:				
Series "A" 3½% $ 31,471,800 1/1/43 to 6/30/46 3½ Years	3,804,458	.....	50,838	3,855,296
" "C" 4% 121,477,030 " to " 3½ "	12,760,482	3,762,498	483,804	17,006,784
New First Mortgage Sinking Fund ¼% $152,948,830 1/1/43 to 6/30/46 3½ Years	1,069,277	235,156	33,870	1,338,303
Interest and Sinking Fund on General Mortgage Bonds:				
Series "A" Interest 4½% $120,676,327 1/1/43 to 6/30/46 3½ Years	13,598,369	3,008,246	2,399,906	19,006,521
" "A" Sinking Fund ½% 120,676,327 " to " 3½ "	1,510,930	334,250	266,656	2,111,836
" "B" Interest 5% 38,498,745 " to " 3½ "	5,983,599	.....	753,682	6,737,281
" "B" Sinking Fund ½% 38,498,745 " to " 3½ "	598,360	.....	75,368	673,728
Dividends on Preferred Stock 57,659,688 " to " 3½ "	8,888,983	.....	1,201,462	10,090,445
Interest on Plaza-Olive Bldg. 1st Mtge. Bonds 3% $527,000 1/1 to 6/30/46	7,905	.....	.....	7,905
Total Requirements	$ 71,281,180	$ 10,952,049	$ 8,928,487	$ 91,161,716
Less Interest Paid:				
Court Order 2370 Paid—April 1944 (Mo. Pac. 1st & Ref. Mtge. Bonds)	$ 13,159,525	$	$	$ 13,159,525
" " 2371 " " " (N. O. T. & M. 1st Mtge. & Income Bonds)	128,250	3,296,775	.....	3,425,025
" " 2372 " " " (I.-G. N. 1st Mtge. Bonds)	.....	.....	1,610,000	1,610,000
" " 2577 " Dec. " (Mo. Pac. 1st & Ref. Mtge. Bonds)	13,159,525	.....	.....	13,159,525
" " 2578 " " " (N. O. T. & M. 1st Mtge. & Income Bonds)	128,250	3,296,775	.....	3,425,025
" " 2579 " " " (I.-G. N. 1st Mtge. Bonds)	.....	.....	1,610,000	1,610,000
" " 2606 " " " (C. B. U. P. 1st Mtge. Bonds)	97,680	.....	.....	97,680
" " 2789 " Sept. 1945 (Mo. Pac. 1st & Ref. Mtge. Bonds)	13,159,525	.....	.....	13,159,525
" " 2791 " " " (I.-G. N. 1st Mtge. Bonds)	.....	.....	1,610,000	1,610,000
" " 2792 " " " (C. B. U. P. 1st Mtge. Bonds)	130,240	.....	.....	130,240
" " 2793 " " " (Cairo & Thebes 1st Mtge. Bonds)	339,800	.....	.....	339,800
" " 2790 " Dec. " (N. O. T. & M. 1st Mtge. & Income Bonds)	.....	2,197,850	.....	2,197,850
" " 2790 " Apr. 1946 (N. O. T. & M. 1st Mtge. Pledged Bonds)	85,500	.....	.....	85,500
Misc. Interest & Dividends retained by R. F. C., J. P. Morgan and Railroad Credit Corpn.				
R. F. C.	562,455	.....	.....	562,455
J. P. Morgan	516,375	.....	.....	516,375
Railroad Credit Corporation	213,375	.....	33,554	246,929
Total Interest Paid	$ 41,680,500	$ 8,791,400	$ 4,863,554	$ 55,335,454
Net Unpaid Requirements Under Plan	$ 29,600,680	$ 2,160,649	$ 4,064,933	$ 35,826,262
Cash Balance after Requirements	$ 73,292,320	$ 19,890,351	$ 9,530,067	$102,712,738
[illegible] to be taken care of:				
[illegible] Contingencies	$ 15,000,000	$ 2,000,000	$ 2,000,000	$ 19,000,000

Reserves to be taken care of:				
Working Fund and Contingencies	$ 15,000,000	$ 3,000,000	$ 2,000,000	$ 20,000,000
All taxes (except Federal Income and Excess Profits Taxes) which will be accrued and not paid at June 30, 1946	1,600,000	307,000	130,000	2,037,000
Estimated Federal Income & Excess Profits Tax Liability at June 30, 1946, including balance payable on 1945 tax liability and reserves for possible deficiency in prior years	20,000,000	4,500,000	1,000,000	25,500,000
Reorganization expense (estimated)	2,000,000	300,000	200,000	2,500,000
Reserve for Deferred Maintenance	3,610,000	286,000	394,000	4,290,000
Reserve for Land Grant Deductions	5,250,000	465,000	465,000	6,180,000
Total Reserves	$ 47,460,000	$ 8,958,000	$ 4,189,000	$ 60,607,000
Balance	$ 25,832,320	$ 10,932,351	$ 5,341,067	$ 42,105,738

Office of Chief Acctg. & Fin. Officer,
St. Louis, Mo., May 7, 1946.

Trustee's H

Trustee's Exhibit 2.

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6935

Missouri Pacific Railroad Company

Statement showing amount required to settle Claim of Secured Banks at June 30, 1946 with Interest at 6% to date of Bankruptcy April 1, 1933 and 4% thereafter and List of Collateral Pledged.

Interest		
October 1, 1932 to March 31, 1933 @ 6%		$ 175,018
April 1, 1933 to June 30, 1946 @ 4%		3,102,263
Total Interest		$ 3,277,281
Payments		
Interest paid prior to bankruptcy @ 6%		$ 88,471
By application of interest and dividends on pledged securities:		
Mo. Pac. First & Refg. Mtge. Bonds	$ 1,937,500	
Texas & Pacific Common Stock	631,125	2,568,625
Total Payments		$ 2,657,096
Unpaid Interest		$ 620,185
Principal amount of Loans		5,850,000
Amount due		$ 6,470,185

Collateral

	Par Value	Book Value	Estimated Value Market Quotation	Estimated Value Market Value
Missouri Pacific R. R. Co. First & Refunding Bonds	$ 7,750,000	$ 7,750,000	97 May 29	$ 7,517,500
Texas & Pacific Ry. Co. Common Stock	11,475,000	5,312,427	64½ May 29	7,401,375
	$19,225,000	$13,062,427		$14,918,875

Office of Chief Accts. & Fin. Officer,
St. Louis, Mo., June 17, 1946.

The Court: Is there anything else?

Mr. Homire: In the Stipulation with reference to that part of the record of the R. F. C. hearing that is to be incorporated as part of this record, I assume that includes the Petition, the various Answers that were filed, and the Order which Your Honor entered on that Petition?

(To Mr. Dearmont) Is that agreeable?

Mr. Dearmont: Yes, that is agreeable. As a matter of fact, I think it is all part of the record of this proceeding, but I agree with you that it should include those.

Mr. Homire: I ask simply for information.

Mr. Pierce: The Debtor asks that the Trustee be advised and instructed to make the settlement.

Mr. Homire: The position of the Secured Banks is set forth in its Answer which has been filed herein, and also in a memorandum which I have filed with the Court. I think that that is all that we need to say on the subject; our position is fully set forth therein. Unless something further develops, I think that is all I have to say.

Mr. Bean: If the Court please, on behalf of the Convertible Bondholders' Group, represented by Mr. Kirshbaum and myself, we think the Motion should be sustained as in the best interest of the Estate.

Mr. Chasnoff: On behalf of the Group of Institutional Holders of First and Refunding bonds, I am instructed by Mr. Kitchel, who is New York counsel, to make the objection that the proposed compromise constitutes a preference in that First and Refunding moneys are used to effect the payment; the testimony given on the prior hearing shows that the moneys used are moneys that fall within the claimed lien of the First and Refunding bonds, and on the basis of the request for sequestration and the order that was entered in that connection.

The Court: Is there anything else?

(No response.)

Mr. Dearmont: I have prepared an order which is sub-

stantially the same as the order entered on the R. F. C. claim.

Mr. Homire: Is this matter concluded?

The Court: Yes, this matter is concluded. I have signed the order.

(Excerpts from Hearing before Interstate Commerce Commission at Brooklyn, New York, on October 21, 1943.)

Exam. Jewel: Mr. Biggs, it is not clear in my mind as to the identity and extent of the interests that you represent. Would you mind repeating that for the record, even if you have already stated it?

Mr. Biggs: I represent Mr. Andrew W. Comstock, who is the owner and holder of $80,000 secured Serial 5¼ bonds; I represent Mr. Fred T. Wilson, who is the owner and holder of $150,000 General 4 Per Cent Mortgage Bonds, and I represent Mrs. Helen J. Comstock, who is the owner of, I believe, 39 shares of the Common Capital Stock of the NOT&M.

Exam. Jewel: Was your intervention granted on the basis of those representations?

Mr. Biggs: That is correct; there are three separate interventions, not one.

Mr. Teitelbaum: Would it be fair to inquire when the security holdings were acquired by the clients of Mr. Biggs?

Director Sweet: You can inquire if you wish.

Mr. Teitelbaum: May I ask that question, Mr. Biggs?

Mr. Biggs: Frankly, I do not know.

Mr. Teitelbaum: I believe Mr. Comstock is here.

Mr. Comstock: I acquired my bonds after the bankruptcy, the same as Mr. Walker, Chairman of the Gulf Coast—

Mr. Adkins: I object to that statement; there is no evidence of that in the record.

Mr. Teitelbaum: Can we swear the witness and have him testify as to that, Mr. Director?

ANDREW W. COMSTOCK

was sworn, and testified as follows:

Direct Examination.

Q. (By Mr. Teitelbaum) Mr. Comstock, where do you make your home? A. [Evanstown], Illinois.

Q. What Missouri Pacific securities do you now own?

Mr. Biggs: I object to that question. The witness can testify as to the $80,000. That is all that is before the Court here. He is only claiming $80,000 Secured Serial 5¼s.

Mr. Teitelbaum: The Witness hasn't testified to anything as yet. Mr. Biggs purported to make a statement. I am now examining Mr. Comstock under oath.

Director Sweet: It seems to me that the question is proper. He may answer it.

The Witness: The Serial 5¼s—

Q. (By Mr. Teitelbaum) In what principal amount?

A. $80,000.

Q. Do you own any other Missouri Pacific securities?

A. Yes, Missouri Pacific General 4s.

Q. In what amount? A. $10,000.

Q. Any other Missouri Pacific securities?

A. I own 1000 shares of Missouri Pacific Old Preferred.

Q. Stock? A. That is correct.

Q. Who represents you as a holder of your $10,000 principal amount of General Mortgage Bonds?

A. You mean what attorney?

Q. Yes. A. There is no attorney that represents me.

Q. You are not represented here as a holder of General Mortgage Bonds? A. That is correct.

Q. Are you represented as a holder of your Preferred Stock? A. No, sir.

Q. Your representation here through Mr. Biggs is entirely for your holdings in Series A Notes? A. Yes, sir.

Q. Five and a quarter Series Notes? A. That is right.

Q. Are you the beneficial owner of these Notes?

A. What do you mean by that?

Q. Did you pay for them and are they yours, or do you hold them for someone else?

A. Some of them I own myself; some of them my wife owns.

Q. Does anyone besides you and your wife own them?

A. No.

Q. How many do you own, and how many does your wife own? A. I own $10,000 and my wife has $70,000.

Q. Did you state, or didn't your counsel state in a petition to intervene here. that you were the owner of the $80,000? A. Owner and holder.

Q. Are you the owner and holder of the $80,000 principal amount? A. I hold the entire $80,000 in Notes.

Q. Are you the owner of the $80,000 principal amount?

A. I am not the owner of the $80,000.

Q. Your petition for intervention states that you were the owner and holder of $80,000. A. It did.

Q. You want to correct that statement in your petition for intervention?

Director Sweet: Maybe it is for counsel to [day] whether he wants to correct it or not. Maybe counsel can answer your question.

Mr. Biggs: The record speaks for itself. He states that he is holder of the $80,000.

Mr. Teitelbaum: His testimony states that he is the owner of $10,000 in bonds.

Q. (By Mr. Teitelbaum) I ask you whether you want to change the record to conform with the proof?

Mr. Biggs: If you want the record changed to show that his wife is owner of $70,000 of the $80,000, it is perfectly all right with me.

Q. (By Mr. Teitelbaum) Then you are represented here by Mr. Biggs as the holder and owner of $10,000 of Serial 5-¼s; is that true?

A. Well, the holder and owner of $80,000 par value.

Q. You do not own $80,000, as I understand it, according to your testimony; do you? A. I own ten.

Q. Then you do not own eighty? A. No. I hold seventy.

Q. When did you acquire your $10,000 par value—

Mr. Biggs: I object to that as irrelevant and immaterial.

Mr. Teitelbaum: I submit that it is not irrelevant. It goes to the question of good faith in making this extended offer of proof which this gentleman proposes to make and keep us all here waiting while he makes it.

Director Sweet: The witness volunteered the statement awhile ago. I think he may answer it.

The Witness: I acquired my ten bonds early in 1943, I believe.

Q. (By Mr. Teitelbaum) What month, would you say?

A. January.

Q. From whom did you acquire them?

A. You mean from whom I bought them?

Q. Yes, sir. A. Farwell, Chapman & Company.

Q. What did you pay for them? A. I don't recall.

Q. You must know generally what you paid for them.

A. Around 10, I would say.

Q. So your investment in those $10,000 par value bonds would be about $1000? A. Correct.

Q. When did your wife acquire her $70,000 of bonds?

A. She acquired some of hers in the latter part of 1942 and early in 1943.

Q. And was the price also at about $10?

A. About the same.

Q. What is your business, Mr. Comstock?

A. Looking after my own interests.

Q. Well, that is a business we all have, sir. However, more particularly, in what business do you make your livelihood?

A. Well, I was in the investment business for a good many years.

Q. Are you in the investment business now?

A. Well, in a way I am, yes.

Q. What was your firm connection?

A. Blake Brothers and Company.

Q. Where are they located?

A. They retired from business in 1938.

Q. Is that when you retired? A. Yes.

Q. Who were the members of the firm of Blake Brothers & Company?

A. Mr. Edward Blagden, Lawrence Howe, Howland S. Davis, T. D. Quisenberry, and there were some other partners in Boston, a Mr. Harris and a Mr. Blake in Boston.

Q. Is Mr. Quisenberry a holder of Serial 5-¼s?

A. I don't know.

Q. What caused you to take an active interest in this proceeding, Mr. Comstock?

A. Well, I speculated in other situations that looked favorable to me. This looked like a situation that was earning considerable money.

Q. As a speculation, did you feel that you could, by taking an active part in these proceedings and engaging counsel, make a profit after paying your expenses, with an investment of $1000? A. That's possible.

Q. You felt that there was possible profit there?

A. Yes.

Q. Well, how high did you think the price of Serial 5-¼s could go so as to show you a net profit after expenses for counsel fees?

A. I don't know; it was in the laps of the Gods. Nobody can answer that question.

Q. Well, we have some close ideas. What is your idea?

A. I had no idea.

Q. You just thought it would go high?

A. I thought I was buying value, the same as when you buy any other security, you figure the intrinsic value.

Q. In your speculations, and in the business of taking care of yourself, do you engage counsel in every matter in which you make an investment? A. No.

Q. What was your purpose in engaging counsel in this case?

A. I thought the Serial 5-¼s had a clear-cut position in this picture and that they were worth considerably more than what they were selling for at the time I bought them.

Q. What are they selling for now?

A. I haven't had a market on them since I left Chicago; I couldn't tell you.

Mr. Teitelbaum: I have no further questions.

Mr. Biggs: No questions.

Director Sweet: You have some friends who are in the situation about as you are?

The Witness: Yes, sir.

Director Sweet: And you have been considering forming a group for yourself and the others, to represent your interests, have you not?

The Witness: I represent the group.

Director Sweet: We raised some question about your right to solicit the right to represent anybody else, did we not?

Mr. Biggs: There has been no solicitation.

The Witness: No solicitation.

Director Sweet: We raised some question about your rights and, therefore, in your petition it was limited to your right to intervene personally instead of granting a right for you to intervene on behalf of others, wasn't it?

Mr. Biggs: That is right.

Mr. Homire: May I inquire of the witness, Mr. Director?

Director Sweet: Yes.

Cross Examination.

Q. (By Mr. Homire) Have you named all of the other associates, Mr. Comstock? You said you had some friends that were in this group. Who were they?

A. Those papers were all sent to the Interstate Commerce Commission.

Mr. Biggs: They were all filed with the ICC.

Director Sweet: We would not permit him to intervene in behalf of anybody but himself, so I suppose the other parties are not represented here.

Q. (By Mr. Homire) Have you taken an appeal from the decree of the District Court of the United States, sitting in

St. Louis, that authorized the interest payments in September, I think? A. Yes.

Q. You have taken an appeal to hold up those interest payments? A. Yes.

Director Sweet: Are there any other questions of the witness?

(No response.)

Director Sweet: That seems to be all.

(Witness excused.)

Director Sweet: Have we any other witnesses?

Mr. Smith: I have one witness, Mr. Director.

Director Sweet: We will take a short recess.

(Whereupon, a short recess was taken.)

After Recess.

Director Sweet: Come to order, gentlemen.

Mr. Teitelbaum: I would like to recall Mr. Comstock, Mr. Director.

Director Sweet: All right.

ANDREW W. COMSTOCK

was recalled, and testified further as follows:

Redirect Examination.

Q. (By Mr. Teitelbaum) Mr. Comstock, who is Helen J. Comstock? A. My wife.

Q. She is the owner of 43 shares of NOT&M stock according to her petition to intervene, made in her behalf by Mr. Biggs, is that true? A. That is right.

Q. When did she acquire her stock?

A. I believe she bought that stock in the latter part of 1942.

Q. What month, would you say?

A. In the last quarter of the year.

Q. Somewhere between October and December?

A. Something like that.

Q. What did she pay for that stock?

A. Around five or six dollars a share.

Q. From whom, or through whom, did she buy it?

A. She bought it through Farwell, Chapman & Company, Members of the New York Stock Exchange, in Chicago.

Q. Who is Fred Wilson?

A. Fred Wilson is a business man formerly of Chicago. He lives on a farm down in Illinois.

Q. He lives in Plainfield, Illinois?

A. I don't know much about him, except that he has a very fine record as a business man. He formerly ran the Mapes Company for a number of years.

That was a very successful concern. He is in the paper business, or was in the paper business. He is an elderly man.

Q. Was he ever in the security business, in which you were engaged some years ago?

A. You mean connected with me?

Q. Well, was he in the security business in any form?

A. I don't know.

Q. Was he ever connected with you? A. No.

Q. Do you know that he is represented here by Mr. Biggs, who filed a petition to intervene for him?

A. Yes, I know of that.

Q. How do you know of that? A. Well—

Mr. Biggs: You have been advised by me, haven't you?

Mr. Teitelbaum: I will question the witness, please.

The Witness: I admit I know Mr. Wilson. I saw Mr. Wilson last week. He told me.

Q. (By Mr. Teitelbaum) What securities did he say he held? A. The General 4s.

Q. When did he say he bought those? A. He did not say.

Q. Do you know when he bought those? A. I do not.

Q. Did you recommend Mr. Biggs to him as counsel?

A. Will you repeat that?

Q. Did you recommend Mr. Biggs to him as counsel?

A. I spoke very highly of Mr. Biggs to Mr. Wilson.

Q. Has Mr. Biggs been your lawyer for any length of time?

A. Since 1942, back in May, I believe it was, or April.

Q. Does he represent you in other matters besides your holdings of Missouri Pacific securities?

Director Sweet: I don't know that that is very material. I think we have gone about as far as we need to on that.

Mr. Teitelbaum: I was interested in ascertaining how the authorization was procured in view of the language of the statute, Mr. Director.

Director Sweet: I believe a man has a right to employ an attorney if he wants to and when he wants to.

Mr. Teitelbaum: I think he has. There is a question of solicitation, though, is there not?

Director Sweet: Not so far as I know. We have acted on the petition on the theory that there is no solicitation there, and it is represented that there is none. As far as we are concerned, that is cleared up.

Mr. Teitelbaum: May I ask one or two questions more?

Director Sweet: You are not going to inquire into the relation of the attorney and his client here, I suppose?

Mr. Teitelbaum: If you prefer that I should not, I will not.

Director Sweet: I prefer you should not.

Mr. Teitelbaum: Then I have no further questions.

Q. (By Mr. Homire) In connection with your appeal from the order of Judge Moore, directing the payment of interest on the First and Refunding Bonds and the other issues that are involved in that hearing that was held last month, are you going to attempt to stay the carrying out of that order? A. Yes, sir.

Q. Are you required to, file any bond, or have you been advised as to whether you have to file a bond in order to stay the payment of that interest?

A. No, I have not been advised.

Mr. Homire: That is all I have.

Q. (By Mr. Teitelbaum) Do you think that the restraint of the payment of those millions of dollars of interest to other security holders is a necessary protection to your investment?

A. I believe that money can be utilized to get rid of a lot of debt of the Missouri Pacific.

Mr. Biggs: If your Honor please, this is utterly irrelevant.

Mr. Teitelbaum: It is directly to the question of good faith.

Director Sweet: The witness has answered, has he not?

Mr. Teitelbaum: I believe so.

Director Sweet: Are there any other questions?

(No response.)

Director Sweet: I guess that is all, Mr. Comstock.

(Witness excused.)

(Order of District Court for forwarding of Original Files to Appellate Court in lieu of preparing transcript of record.)

On May 10, 1946, on application of the aforesaid appellants, the District Court directed the Clerk of said District Court to forward a number of the original records of said Court to the United States Circuit Court of Appeals, Eighth Circuit, in lieu of said appellants' filing copies of same. A copy of said Order designating said records is on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

(Designation of Andrew W. Comstock of matters to be contained in Transcript on Appeal.)

(Filed May 13, 1946.)

To James J. O'Connor, Clerk, and to all appellants, appellees and parties:

Please Take Notice That Andrew W. Comstock hereby serves and files, pursuant to Rule 75 (a) and (k) of the Rules of Civil Procedure of the District Court of the United States, a designation of the portions of the record, proceedings and evidence which are to be contained in the Record on Appeal from the order entered herein on January 22, 1946, denying Comstock's Objection No. 19 and related objections and claim for equitable treatment, being Order No. 2604-A, the following items being designated in addition to those being designated by Debtor and other [appelants] on their related appeals from Order No. 2604-B approving the Plan of Reorganization of Debtor:

1. Objections of Andrew W. Comstock, filed on or about November 17, 1944, to Plan of Reorganization contained in Third Supplemental Report and order of the Interstate Commerce Commission of October 9, 1944.

2. Supplemental Report of Interstate Commerce Commission of July 4, 1944, pages 20837 to 20845, inclusive.

3. Third Supplemental Report of Interstate Commerce Commission, pages 20885 to 20886, inclusive.

4. Petition of Ernest Lee Foley filed in this Court on July 6, 1944; answers to said petition; stenographic transcript of the hearing on said petition; and order of Court denying said petition.

5. Petition of Andrew W. Comstock filed in this Court on or about November 17, 1944; answers to said petition; stenographic transcript of the hearing on said petition; and order of Court denying said petition.

6. Petition of the Irving Trust Company and the Walker Committee filed in this Court in 1937 and order of this Court pertaining to same.

7. Orders 19 and 235.

8. Proof of claim of the Missouri Pacific Railroad against the New Orleans, Texas and Mexico Railway Company.

9. Latest order of this Court extending the time of Guy A. Thompson, Trustee, to disaffirm contracts of the respective debtors.

10. Order of this Court No. 40, appointing Guy A. Thompson as Trustee, printed record 257.

11. Order of this Court at the hearing on the Plan of Reorganization in January, 1945, directing that there shall be a separate hearing and order as to Comstock's Objection 19 and related objections to the Plan of Reorganization.

12. Petition of Guy A. Thompson, Trustee, for authority to pay claims of the Reconstruction Finance Corporation and the Railroad Credit Corporation; answers to said petition; stenographic transcript of the hearing on said petition; and order of this Court.

13. Stenographic transcript of the hearings held in January 1945 and thereafter, together with all exhibits filed by all parties to said hearings on Objection 19 and related objections of Andrew W. Comstock to the Plan of Reorganization.

14. Opinion of this Court approving the Plan of Reorganization No. 2866, dated December 21, 1945, printed record 22993.

15. Order of this Court No. 2866-A, dated December 28, 1945, amending the aforesaid opinion, printed record 23027.

16. Order of this Court No. 2866-B, dated January 7, 1946, further amending the aforesaid opinion, printed record 23030-A.

17. Opinion of this Court on said Plan of Reorganization as amended by the aforesaid two orders.

18. This Court's findings of fact, conclusions of law and

order, judgment and decree No. 2604-A, entered January 22, 1946, denying Comstock's Objection No. 19 and related objections and claim for equitable treatment, printed record pages 23167 to 23203.

19. Andrew W. Comstock's notice of appeal filed February 20, 1946.

20. Bond of Andrew W. Comstock filed February 20, 1946.

21. This designation of record.

22. Statement of points upon which appellant intends to rely.

23. Certificate of Clerk as to mailing of the aforesaid notice of appeal.

24. Proof of service of said statement of points and of said designation of record.

25. Court's order of May 10, 1946, re transmittal of record to United States Circuit Court of Appeals, Eighth Circuit.

WM. H. BIGGS,
BIGGS, CURTIS and CROSSEN,
Attorneys for Appellant.

(Designation of New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, etc., of Matters to be contained in Transcript on Appeal)

(Filed May 13, 1946)

To James J. O'Connor, Clerk, and to all appellants, appellees and parties:

Please Take Notice That the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock hereby serves and files, pursuant to Rule 75(a) and (k) of the Rules of Civil Procedure of the District Court of the United States, a designation of the portions of the

record, proceedings and evidence which are to be contained in the Record on Appeal from the order entered herein on January 22, 1946, denying Comstock's Objection No. 19 and related objections and claim for equitable treatment, being Order No. 2604-A, the following items being designated in addition to those being designated by Debtor and other appellants on their related appeals from Order No. 2604-B approving the Plan of Reorganization of Debtor:

1. Notice of appeal of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, filed February 20, 1946.

2. Bond of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, filed February 20, 1946.

3. This designation of record.

4. Statement of points upon which appellant intends to rely on appeal.

5. Proof of service of said statement of points on appeal and designation of record.

6. Certificate of Clerk as to mailing of notice of appeal.

7. All items contained in the designation of record by Andrew W. Comstock on his appeal from Order No. 2604-A.

8. Court's order of May 10, 1946 re transmittal of record to the United States Circuit Court of Appeals, Eighth Circuit.

WM. H. BIGGS,
BIGGS, CURTIS AND CROSSEN,
Attorneys for Appellant.

(Designation of Guy A. Thompson, Trustee of the New Orleans, Texas & Mexico Railway Company, by Andrew W. Comstock, etc., of matters to be contained in Transcript on Appeal)

(Filed May 13, 1946.)

To James O'Connor, Clerk, and to all appellants, appellees and parties:

Please Take Notice That Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, hereby serves and files, pursuant to Rule 75(a) and (k) of the Rules of Civil Procedure of the District Court of the United States, a designation of the portions of the record, proceedings and evidence which are to be contained in the Record on Appeal from the order entered herein on January 22, 1946, denying Comstock's Objection No. 19 and related objections and claim for equitable treatment, being Order No. 2604-A, the following items being designated in addition to those being designated by Debtor and other appellants on their related appeals from Order No. 2604-B approving the Plan of Reorganization of Debtor:

1. Notice of appeal of Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, filed February 20, 1946.

2. Bond of Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, filed February 20, 1946.

3. This designation of record.

4. Statement of points upon which appellant intends to rely on appeal.

5. Proof of service of said statement of points on appeal and designation of record.

6. Certificate of Clerk as to mailing of notice of appeal.

7. All items contained in designation of record of Andrew W. Comstock on his appeal from Order No. 2604-A.

8. Court's order of May 10, 1946 re transmittal of

record to the United States Circuit Court of Appeals, Eighth Circuit.

WM. H. BIGGS,
BIGGS, CURTIS and CROSSEN,
Attorneys for Appellant.

(Designation of Andrew W. Comstock of Matters to be contained in Transcript on Appeal)

(Filed May 13, 1946.)

To James J. O'Connor, Clerk, and to all appellants, appellees and parties:

Please Take Notice That Andrew W. Comstock hereby serves and files, pursuant to Rule 75 (a) and (k) of the Rules of Civil Procedure of the District Court of the United States, a designation of the portions of the record, proceedings and evidence which are to be contained in the Record on Appeal from the order entered herein on February 15, 1946 denying the petition of Andrew W. Comstock for leave to appeal in the name of Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company from Order No. 2604-A, the following items being designated in addition to those being designated by Debtor and other appellants who filed related appeals from Order No. 2604B approving the Plan of Reorganization of Debtor:

1. Notice of appeal of Andrew W. Comstock filed February 20, 1946.

2. Bond of Andrew W. Comstock filed February 20, 1946.

3. Petition of Andrew W. Comstock for leave to appeal from order No. 2604-A in the name of Guy A. Thompson as Trustee of the New Orleans, Texas and Mexico Railway Company, filed February 13, 1946, and order dated February 15, 1946 denying said petition.

4. This designation of record.

5. Statement of points upon which appellant intends to rely.

6. Certificate of Clerk as to mailing of notice of appeal.

7. Proof of service of said statement of said points on appeal and said designation of record.

8. All items contained in the designation of record by Andrew W. Comstock on his appeal from Order No. 2604-A.

9. Court's order of May 10, 1946 re transmittal of record to the United States Circuit Court of Appeals, Eighth Circuit.

WM. H. BIGGS,
BIGGS, CURTIS and CROSSEN,
Attorneys for Appellant.

Designation of Additional Contents of Record on Appeal of Andrew W. Comstock From Order No. 2604-A.

(Filed May 20, 1946.)

To the Honorable James J. O'Connor,
Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri:

On or about May 11, 1946, Appellant, Andrew W. Comstock, filed with the Clerk of this Court a designation of contents of record on appeal, in his appeal to the Circuit Court of Appeals for the Eighth Circuit from an Order of this Court entered in the above entitled proceedings, numbered 2604-A, designating certain portions of but less than the complete record in these proceedings.

The undersigned Appellee hereby designates for inclusion in said record on appeal the following additional portions of the record in the above entitled proceedings, to wit:

1. The following Exhibits admitted in evidence and portions of the transcript of testimony taken at the hearing held before the Interstate Commerce Commission beginning

at Washington, D. C. on February 4, 1936, in proceedings entitled "In the Matter of the Missouri Pacific Railroad Company, Debtor", and filed in the above entitled proceedings:

(a) Exhibit No. 117 introduced in evidence at said hearing, on February 5, 1936, as appears from page 184 of the transcript of testimony at said hearing;

(b) Exhibit No. 226 introduced in evidence at said hearing, on February 7, 1936, as appears from page 529 of the transcript of testimony at said hearing;

(c) Exhibit No. 800 introduced in evidence at said hearing, on September 29, 1937, as appears from page 4720 of the transcript of testimony at said hearing;

(d) That portion of the transcript of testimony taken at said hearing, on February 7, 1936, which begins at the beginning of the ninth line on page 529 of said transcript and ends at the end of the tenth line on page 531 of said transcript;

(e) That portion of the transcript of testimony taken at said hearing, on February 7, 1936, which begins at the beginning of the second line on page 536 of said transcript and ends at the end of the third line on page 537 of said transcript.

2. The Report covering the audit made by Price Waterhouse & Company for the calendar year 1933 of all of the books and records of the Missouri Pacific Railroad Company and its subsidiaries and filed in these proceedings, which Report is referred to in the petition of the Trustees of the Debtor (No. 246) filed herein on October 19, 1934 (R. 1751).

2-A. Portions of the stenographic transcript of hearing on objections to Plan of Reorganization, as approved by Interstate Commerce Commission, and on claims for equitable treatment thereunder held on January 8, 1945, and subsequent dates, during the September Term, 1944, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, to-wit, pages 4-b and 5, inclusive, the excerpts of December 1, 1944 proceedings on pages A to E inclusive at the end of volume one; and pages 25 to 577 inclusive.

3. This designation of additional contents of record on appeal.

4. Proof of service of this designation of additional contents of record on appeal.

5. Petition of the Debtor's Trustees (No. 246; R. 1751) filed in the above entitled proceedings on October 19, 1934, advising the Court that the Report of Messrs. Price Waterhouse & Co. of their audit for the year 1933 had been delivered to the Trustees and filed in the above entitled proceedings.

The undersigned Appellee hereby further designates for inclusion in said record on appeal all of the record on appeal filed with the United States Circuit Court of Appeals for the Eighth Circuit on December 20, 1941 in the appeals from the order and decree of this Court in the above entitled proceedings No. 1494 (R. 15175) (said appeals being numbered in said Circuit Court of Appeals 12130 to 12136). With respect to this designation, reference is hereby made to an order of said Circuit Court of Appeals entered in said appeals on May 8, 1943, which order provides that the record on appeal in said appeals numbered 12130 to 12136 need not be reprinted, refiled or recertified.

CADWALADER, WICKERSHAM & TAFT,
14 Wall Street,
New York 5, N. Y.,

LOWENHAUPT, WAITE, CHASNOFF & STOLAR,
408 Pine Street,
St. Louis 2, Missouri,

Attorneys for the Group of Institutional Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds,
Appellee.

May 20, 1946 Copy Received Wm. H. Biggs, Atty. for Appellant.

Designation of Additional Contents of Record on Appeal of Andrew W. Comstock in the Name of New Orleans, Texas & Mexico Railway Company From Order No. 2604-A.

(Filed May 20, 1946.)

To the Honorable James J. O'Connor,
Clerk of the District Court of the
United States for the Eastern Division
of the Eastern Judicial District of
Missouri:

On or about May 11, 1946, Andrew W. Comstock in the name of New Orleans, Texas & Mexico Railway Company, Appellant, filed with the Clerk of this Court a designation of contents of record on appeal, in his purported appeal to the Circuit Court of Appeals for the Eighth Circuit from an Order of this Court entered in the above entitled proceedings, numbered 2604-A, designating certain portions of but less than the complete record in these proceedings.

The undersigned Appellee hereby designates for inclusion in said record on appeal the following additional portions of the record in the above entitled proceedings, to wit:

1. The following Exhibits admitted in evidence and portions of the transcript of testimony taken at the hearing held before the Interstate Commerce Commission beginning at Washington, D. C. on February 4, 1936, in proceedings entitled "In the Matter of the Missouri Pacific Railroad Company, Debtor", and filed in the above entitled proceedings:

(a) Exhibit No. 117 introduced in evidence at said hearing, on February 5, 1936, as appears from page 184 of the transcript of testimony at said hearing;

(b) Exhibit No. 226 introduced in evidence at said hearing, on February 7, 1936, as appears from page 529 of the transcript of testimony at said hearing;

(c) Exhibit No. 800 introduced in evidence at said

hearing, on September 29, 1937, as appears from page 4720 of the transcript of testimony at said hearing;

(d) That portion of the transcript of testimony taken at said hearing, on February 7, 1936, which begins at the beginning of the ninth line on page 529 of said transcript and ends at the end of the tenth line on page 531 of said transcript;

(e) That portion of the transcript of testimony taken at said hearing, on February 7, 1936, which begins at the beginning of the second line on page 536 of said transcript and ends at the end of the third line on page 537 of said transcript.

2. The Report covering the audit made by Price Waterhouse & Company for the calendar year 1933 of all of the books and records of the Missouri Pacific Railroad Company and its subsidiaries and filed in these proceedings, which Report is referred to in the petition of the Trustees of the Debtor (No. 246) filed herein on October 19, 1934 (R. 1751).

2-A. Portions of the stenographic transcript of hearing on objections to Plan of Reorganization, as approved by Interstate Commerce Commission, and on claims for equitable treatment thereunder held on January 8, 1945, and subsequent dates, during the September Term, 1944, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, to-wit, pages 4-b and 5, inclusive, the excerpts of December 1, 1944 proceedings on pages A to E inclusive at the end of volume one; and pages 25 to 577 inclusive.

3. This designation of additional contents of record on appeal.

4. Proof of service of this designation of additional contents of record on appeal.

5. Petition of the Debtor's Trustees (No. 246; R. 1751) filed in the above entitled proceedings on October 19, 1934, advising the Court that the Report of Messrs. Price Waterhouse & Co. of their audit for the year 1933 had been delivered to the Trustees and filed in the above entitled proceedings.

The undersigned Appellee hereby further designates for inclusion in said record on appeal all of the record on appeal filed with the United States Circuit Court of Appeals for the Eighth Circuit on December 20, 1941 in the appeals from the order and decree of this Court in the above entitled proceedings No. 1494 (R. 15175) (said appeals being numbered in said Circuit Court of Appeals 12130 to 12136). With respect to this designation, reference is hereby made to an order of said Circuit Court of Appeals entered in said appeals on May 8, 1943, which order provides that the record on appeal in said appeals numbered 12130 to 12136 need not be reprinted, refiled or recertified.

CADWALADER, WICKERSHAM & TAFT,
14 Wall Street,
New York 5, N. Y.,
LOWENHAUPT, WAITE, CHASNOFF & STOLAR,
408 Pine Street,
St. Louis 2, Missouri,

Attorneys for the Group of Institutional Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds,

Appellee.

May 20, 1946, Copy Received. Wm. H. Biggs, Attorney for Appellant.

Designation of Additional Contents of Record on Appeal of Andrew W. Comstock in the Name of Guy A. Thompson, Trustee, Etc. From Order No. 2604-A.

(Filed May 20, 1946.)

**To the Honorable James J. O'Connor,
Clerk of the District Court of the
United States for the Eastern Division
of the Eastern Judicial District of
Missouri:**

On or about May 11, 1946, Andrew W. Comstock, acting in the name of Guy A. Thompson, Trustee of New Orleans, Texas & Mexico Railway Company, Appellant, filed with the Clerk of this Court a designation of contents of record on appeal, in his purported appeal to the Circuit Court of Appeals for the Eighth Circuit from an Order of this Court entered in the above entitled proceedings, numbered 2604-A, designating certain portions of but less than the complete record in these proceedings.

The undersigned Appellee hereby designates for inclusion in said record on appeal the following additional portions of the record in the above entitled proceedings, to wit:

1. The following Exhibits admitted in evidence and portions of the transcript of testimony taken at the hearing held before the Interstate Commerce Commission beginning at Washington, D. C. on February 4, 1936, in proceedings entitled "In the Matter of the Missouri Pacific Railroad Company, Debtor", and filed in the above entitled proceedings:

(a) Exhibit No. 117 introduced in evidence at said hearing, on February 5, 1936, as appears from page 184 of the transcript of testimony at said hearing;

(b) Exhibit No. 226 introduced in evidence at said hearing, on February 7, 1936, as appears from page 529 of the transcript of testimony at said hearing;

(c) Exhibit No. 800 introduced in evidence at said

hearing, on September 29, 1937, as appears from page 4720 of the transcript of testimony at said hearing;

(d) That portion of the transcript of testimony taken at said hearing, on February 7, 1936, which begins at the beginning of the ninth line on page 529 of said transcript and ends at the end of the tenth line on page 531 of said transcript;

(e) That portion of the transcript of testimony taken at said hearing, on February 7, 1936, which begins at the beginning of the second line on page 536 of said transcript and ends at the end of the third line on page 537 of said transcript.

2. The Report covering the audit made by Price Waterhouse & Company for the calendar year 1933 of all of the books and records of the Missouri Pacific Railroad Company and its subsidiaries and filed in these proceedings, which Report is referred to in the petition of the Trustees of the Debtor (No. 246) filed herein on October 19, 1934 (R. 1751).

2-A. Portions of the stenographic transcript of hearing on objections to Plan of Reorganization, as approved by Interstate Commerce Commission, and on claims for equitable treatment thereunder held on January 8, 1945, and subsequent dates, during the September Term, 1944, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, to-wit, pages 4-b and 5, inclusive, the excerpts of December 1, 1944 proceedings on pages A to E inclusive at the end of volume one; and pages 25 to 577 inclusive.

3. This designation of additional contents of record on appeal.

4. Proof of service of this designation of additional contents of record on appeal.

5. Petition of the Debtor's Trustees (No. 246; R. 1751) filed in the above entitled proceedings on October 19, 1934, advising the Court that the Report of Messrs. Price Waterhouse & Co. of their audit for the year 1933 had been delivered to the Trustees and filed in the above entitled proceedings.

The undersigned Appellee hereby further designates for inclusion in said record on appeal all of the record on appeal filed with the United States Circuit Court of Appeals for the Eighth Circuit on December 20, 1941 in the appeals from the order and decree of this Court in the above entitled proceedings No. 1494 (R. 15175) (said appeals being numbered in said Circuit Court of Appeals 12130 to 12136). With respect to this designation, reference is hereby made to an order of said Circuit Court of Appeals entered in said appeals on May 8, 1943, which order provides that the record on appeal in said appeals numbered 12130 to 12136 need not be reprinted, refiled or recertified.

CADWALADER, WICKERSHAM & TAFT,
14 Wall Street,
New York 5, N. Y.,
LOWENHAUPT, WAITE, CHASNOFF & STOLAR,
408 Pine Street,
St. Louis 2, Missouri,
Attorneys for the Group of Institutional Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds,
Appellee.

May 20, 1946, Copy Received. Wm. H. Biggs, Attorney for Appellant.

Designation of Additional Contents of Record on Appeal of Andrew W. Comstock From Order No. 2888.

(Filed May 20, 1946.)

To the Honorable James J. O'Connor,
Clerk of the District Court of the
United States for the Eastern Division
of the Eastern Judicial District of
Missouri:

On or about May 11, 1946, Andrew W. Comstock filed with the Clerk of this Court a designation of contents of record on appeal in his appeal to the Circuit Court of Appeals for the Eighth Circuit from an Order of this Court entered in the above entitled proceedings on February 15, 1946 (No. 2888), designating certain portions of but less than the complete record in these proceedings.

The undersigned Appellee hereby designates for inclusion in said record on appeal the following additional portions of the record in the above entitled proceedings, to wit:

1. The following Exhibits admitted in evidence and portions of the transcript of testimony taken at the hearing held before the Interstate Commerce Commission beginning at Washington, D. C. on February 4, 1936, in proceedings entitled "In the Matter of the Missouri Pacific Railroad Company, Debtor", and filed in the above entitled proceedings:

(a) Exhibit No. 117 introduced in evidence at said hearing, on February 5, 1936, as appears from page 184 of the transcript of testimony at said hearing;

(b) Exhibit No. 226 introduced in evidence at said hearing on February 7, 1936, as appears from page 529 of the transcript of testimony at said hearing;

(c) Exhibit No. 800 introduced in evidence at said hearing, on September 29, 1937, as appears from page 4720 of the transcript of testimony at said hearing;

(d) That portion of the transcript of testimony taken at said hearing, on February 7, 1936, which be-

gins at the beginning of the ninth line on page 529 of said transcript and ends at the end of the tenth line on page 531 of said transcript;

(e) That portion of the transcript of testimony taken at said hearing, on February 7, 1936, which begins at the beginning of the second line on page 536 of said transcript and ends at the end of the third line on page 537 of said transcript.

2. The Report covering the audit made by Price Waterhouse & Company for the calendar year 1933 of all of the books and records of the Missouri Pacific Railroad Company and its subsidiaries and filed in these proceedings, which Report is referred to in the petition of the Trustees of the Debtor (No. 246) filed herein on October 19, 1934 (R. 1751).

2-A. Portions of the stenographic transcript of hearing on objections to Plan of Reorganization, as approved by Interstate Commerce Commission, and on claims for equitable treatment thereunder held on January 8, 1945, and subsequent dates, during the September Term, 1944, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, to-wit, pages 4-b and 5, inclusive, the excerpts of December 1, 1944 proceedings on pages A to E inclusive at the end of volume one; and pages 25 to 577 inclusive.

3. This designation of additional contents of record on appeal.

4. Proof of service of this designation of additional contents of record on appeal.

5. Petition of the Debtor's Trustees (No. 246; R. 1751) filed in the above entitled proceedings on October 19, 1934, advising the Court that the Report of Messrs. Price Waterhouse & Co. of their audit for the year 1933 had been delivered to the Trustees and filed in the above entitled proceedings.

The undersigned Appellee hereby further designates for inclusion in said record on appeal all of the record on appeal filed with the United States Circuit Court of Appeals for the Eighth Circuit on December 20, 1941 in the appeals

from the order and decree of this Court in the above entitled proceedings No. 1494 (R. 15175) (said appeals being numbered in said Circuit Court of Appeals 12130 to 12136). With respect to this designation, reference is hereby made to an order of said Circuit Court of Appeals entered in said appeals on May 8, 1943, which order provides that the record on appeal in said appeals numbered 12130 to 12136 need not be reprinted, refiled or recertified.

CADWALADER, WICKERSHAM & TAFT,
14 Wall Street,
New York 5, N. Y.,
LOWENHAUPT, WAITE, CHASNOFF & STOLAR,
408 Pine Street,
St. Louis 2, Missouri,

Attorneys for the Group of Institutional Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds,

Appellee.

May 20, 1946, Copy Received. Wm. H. Biggs, Attorney for Appellant.

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esignation of Additional Contents of Record on Appeal of Andrew W. Comstock From Order No. 2604-A.

(Filed May 20, 1946.)

o the Honorable James J. O'Connor,
Clerk of the District Court of the
United States for the Eastern Division
of the Eastern Judicial District of
Missouri:

On or about May 11, 1946, Appellant, Andrew W. Comock, filed with the Clerk of this Court a designation of ntents of record on appeal, in his appeal to the Circuit urt of Appeals for the Eighth Circuit from an Order of

this Court entered in the above entitled proceedings, numbered 2604-A, designating certain portions of but less than the complete record in these proceedings.

The undersigned Appellee hereby designates for inclusion in said record on appeal the additional portions of the record in the above entitled proceedings designated in the designations filed herein by a Group of Institutional Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds.

SHEARMAN & STERLING & WRIGHT,
20 Exchange Place,
New York 5, N. Y.,
Attorneys for Bondholders Protective Committee for General Mortgage Bonds of Missouri Pacific Railroad Company,
Appellee.

Designation of Additional Contents of Record on Appeal of Andrew W. Comstock in the Name of New Orleans, Texas & Mexico Railway Company From Order No. 2604-A.

(Filed May 20, 1946.)

To the Honorable James J. O'Connor,
Clerk of the District Court of the
United States for the Eastern Division
of the Eastern Judicial District of
Missouri:

On or about May 11, 1946, Andrew W. Comstock in the name of New Orleans, Texas & Mexico Railway Company, Appellant, filed with the Clerk of this Court a designation of contents of record on appeal, in his purported appeal to the Circuit Court of Appeals for the Eighth Circuit from an Order of this Court entered in the above entitled proceedings, numbered 2604-A, designating certain portions of but less than the complete record in these proceedings.

The undersigned Appellee hereby designates for inclusion in said record on appeal the additional portions of the record in the above entitled proceedings designated in the designations filed herein by a Group of Institutional Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds.

SHEARMAN & STERLING & WRIGHT,
20 Exchange Place,
New York 5, N. Y.,
Attorneys for Bondholders Protective Committee for General Mortgage Bonds of Missouri Pacific Railroad Company,
Appellee.

Designation of Additional Contents of Record on Appeal of Andrew W. Comstock in the Name of Guy A. Thompson, Trustee, Etc. From Order No. 2604-A.

(Filed May 20, 1946.)

To the Honorable James J. O'Connor,
Clerk of the District Court of the
United States for the Eastern Division
of the Eastern Judicial District of
Missouri:

On or about May 11, 1946, Andrew W. Comstock, acting in the name of Guy A. Thompson, Trustee of New Orleans, Texas & Mexico Railway Company, Appellant, filed with the Clerk of this Court a designation of contents of record on appeal, in his purported appeal to the Circuit Court of Appeals for the Eighth Circuit from an Order of this Court entered in the above entitled proceedings, numbered 2604-A, designating certain portions of but less than the complete record in these proceedings.

The undersigned Appellee hereby designates for inclu-

sion in said record on appeal the additional portions of the record in the above entitled proceedings designated in the designations filed herein by a Group of Institutional Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds.

SHEARMAN & STERLING & WRIGHT,
20 Exchange Place,
New York 5, N. Y.,
Attorneys for Bondholders Protective Committee for General Mortgage Bonds of Missouri Pacific Railroad Company,
Appellee.

Designation of Additional Contents of Record on Appeal of Andrew W. Comstock From Order No. 2888.

(Filed May 20, 1946.)

To the Honorable James J. O'Connor,
Clerk of the District Court of the
United States for the Eastern Division
of the Eastern Judicial District of
Missouri:

On or about May 11, 1946, Andrew W. Comstock filed with the Clerk of this Court a designation of contents of record on appeal in his appeal to the Circuit Court of Appeals for the Eighth Circuit from an Order of this Court entered in the above entitled proceedings on February 15, 1946 (No. 2888), designating certain portions of but less than the complete record in these proceedings.

The undersigned Appellee hereby designates for inclusion in said record on appeal the additional portions of the record in the above entitled proceedings designated in the designations filed herein by a Group of Institutional

Holders of Missouri Pacific Railroad Company First and Refunding Mortgage Bonds.

SHEARMAN & STERLING & WRIGHT,
20 Exchange Place,
New York 5, N. Y.,
Attorneys for Bondholders Protective Committee for General Mortgage Bonds of Missouri Pacific Railroad Company,

Appellee.

(Designation of Appellants of matters to be included in printed record.)

(Filed in U. S. Circuit Court of Appeals on August 16, 1946.)

In the United States Circuit Court of Appeals,
Eighth Circuit.

Andrew W. Comstock, holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, etc.

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds, etc. et al,

Appellees.

} No. 13376

New Orleans, Texas and Mexico Railway Company, Debtor, etc. et al,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds, etc. et al,

Appellees.

} No. 13377

Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, etc., Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds, etc. et al, Appellees.

No. 13378

Andrew W. Comstock, etc. Appellant,

vs.

Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, Appellee.

No. 13379

1. The three Notices of Appeal filed in the District Court on February 20, 1946 by the aforesaid appellants in Nos. 13376, 13377 and 13378 from Order 2604-A of the District Court.

2. Notice of Appeal of Andrew W. Comstock from Order of the District Court dated February 15, 1946, filed February 20, 1946.

3. In lieu of printing the four Certificates of the Clerk of the United States District Court as to the mailing of the above four Notices of Appeal, there will be incorporated in the Record the following statement:

> "The Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri duly mailed to all parties in interest copies of the respective Notices of Appeal filed by the aforesaid four appellants. Copies of Certificates of said Clerk as to such mailing are on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit."

4. District Court's findings of fact, conclusions of law and order, judgment and decree No. 2604-A, entered Janu-

ary 22, 1946 denying Comstock's Objection No. 19 and related objections.

5. Petition of Andrew W. Comstock for leave to appeal from Order 2604-A in the name of Guy A. Thompson as Trustee of the New Orleans, Texas and Mexico Railway Company, filed February 13, 1946, and Order of District Court dated February 15, 1946 denying said petition.

6. In lieu of printing the four bonds filed by the respective appellants, there will be incorporated in the Record the following statement:

> "The aforesaid four appellants respectively duly filed on February 20, 1946, with the Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, bonds in the principal amount of $250.00, with The Aetna Casualty and Surety Company as Surety. Copies of said bonds are on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit."

7. In lieu of printing the Designations of Record filed by the aforesaid appellants, there will be included in the Printed Record the following statement:

> "The aforesaid appellants duly filed their respective Designations of Record in their separate appeals from Orders No. 2604-A and No. 2604-B with the Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. All the matters printed herein are included in such Designations, copies of which are on file with the Clerk of the United States [——] Court of Appeals, Eighth Circuit, other than Items 37 to 40 inclusive hereof, which items appeared in the Designation of Record of One of the appellees and were included herein in this Statement at the request of such appellee, as a matter of convenience."

8. Statement of Points to be Relied Upon on Appeal served by the appellant, Andrew W. Comstock; the appellant, New Orleans, Texas and Mexico Railway Company by Andrew W. Comstock; the appellant, Guy A. Thomp-

Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, etc., Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds, etc. et al, Appellees.

No. 13376

Andrew W. Comstock, etc. Appellant,

vs.

Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, Appellee.

No. 13379

1. The three Notices of Appeal filed in the District Court on February 20, 1946 by the aforesaid appellants in Nos. 13376, 13377 and 13378 from Order 2604-A of the District Court.

2. Notice of Appeal of Andrew W. Comstock from Order of the District Court dated February 15, 1946, filed February 20, 1946.

3. In lieu of printing the four Certificates of the Clerk of the United States District Court as to the mailing of the above four Notices of Appeal, there will be incorporated in the Record the following statement:

> "The Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri duly mailed to all parties in interest copies of the respective Notices of Appeal filed by the aforesaid four appellants. Copies of Certificates of said Clerk as to such mailing are on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit."

4. District Court's findings of fact, conclusions of law and order, judgment and decree No. 2604-A, entered Jan-

ary 22, 1946 denying Comstock's Objection No. 19 and related objections.

5. Petition of Andrew W. Comstock for leave to appeal from Order 2604-A in the name of Guy A. Thompson as Trustee of the New Orleans, Texas and Mexico Railway Company, filed February 13, 1946, and Order of District Court dated February 15, 1946 denying said petition.

6. In lieu of printing the four bonds filed by the respective appellants, there will be incorporated in the Record the following statement:

"The aforesaid four appellants respectively duly filed on February 20, 1946, with the Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, bonds in the principal amount of $250.00, with The Aetna Casualty and Surety Company as Surety. Copies of said bonds are on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit."

7. In lieu of printing the Designations of Record filed by the aforesaid appellants, there will be included in the Printed Record the following statement:

"The aforesaid appellants duly filed their respective Designations of Record in their separate appeals from Orders No. 2604-A and No. 2604-B with the Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. All the matters printed herein are included in such Designations, copies of which are on file with the Clerk of the United States [——] Court of Appeals, Eighth Circuit, other than Items 37 to 40 inclusive hereof, which items appeared in the Designation of Record of One of the appellees and were included herein in this Statement at the request of such appellee, as a matter of convenience."

8. Statement of Points to be Relied Upon on Appeal served by the appellant, Andrew W. Comstock; the appellant, New Orleans, Texas and Mexico Railway Company by Andrew W. Comstock; the appellant, Guy A. Thomp-

son, Trustee of New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock in their separate but related appeals from Order 2604-A of the District Court,

9. In lieu of printing the entire Statement of Points to be Relied Upon on Appeal duly served by the appellant, Andrew W. Comstock, in his appeal from the order of the District Court entered on February 15, 1946, denying the petition of Andrew W. Comstock for an order granting Andrew W. Comstock leave to appeal in the name of Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company from Order No. 2604-A, there will be included the following statement:

"In addition to points also appearing in the Statement of Points to be Relied Upon on Appeal duly served by the appellant, Andrew W. Comstock; the appellant, New Orleans, Texas and Mexico Railway Company by Andrew W. Comstock; the appellant, Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock in their separate but related appeals from Order 2604-A, the Statement of Points to be Relied Upon on Appeal duly served by the appellant, Andrew W. Comstock, in his appeal from the order of the District Court entered on February 15, 1946, denying the petition of Andrew W. Comstock for an order granting Andrew W. Comstock leave to appeal in the name of Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company from Order No. 2604-A included the following points, numbered as below:

1. The Court erred in making the said order denying said petition.

2. The Court erred in failing to grant the said petition on behalf of appellant for leave to appeal in the name of Guy A. Thompson, as Trustee of the New Orleans, Texas and Mexico Railway Company, from order number 2604-A, dated and filed herein January 22, 1946, and entitled 'Findings of Fact, Conclusions of Law and Orders Overruling Comstock's Objection 19 and Related Objections.'

3. The Court erred in denying said motion made on behalf of appellant because the New Orleans, Texas and Mexico Railway Company, its estate and the security holders interested therein, including the holders of 5¼% Secured Bonds of Missouri Pacific Railroad Company, have not had the protection of an independent trustee of said New Orleans, Texas & Mexico Railway Company and the estate thereof with regard to the claim against said New Orleans, Texas & Mexico Railway Company and the estate thereof filed in the name of the Missouri Pacific Railroad Company in the above entitled proceedings.

4. The Court erred in making Order No. 2604-A dated and filed herein January 22, 1946, and entitled 'Findings of Fact, Conclusions of Law, and Order Overruling Comstock's Objection 19 and Related Objections,' and further erred in holding, in finding, in considering, in failing to hold and in failing to find the matters set forth hereinafter. (Points 5 to 118 of said Statement of Points are identical with and are stated in the same order as Points 2 to 115 of the Statement of Points printed as Item No. 8 of this Designation.)"

10. Statement of Errors and of Points on Appeal duly served by the appellant, Andrew W. Comstock in his appeal from Order No. 2604-B, approving the Plan of Reorganization of the Missouri Pacific Railroad Company.

11. In lieu of printing the respective proofs of service of the aforesaid Designations of Record and the aforesaid Statements of Points to be Relied Upon on Appeal, the following Statement will be included:

"All the parties in interest were duly served with the Statement of Points to be Relied Upon on the Appeals of the aforesaid appellants from Orders No. 2604-A and No. 2604-B and also were duly served with the aforesaid appellants' Designations of Record. Copies of these proofs of service are on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit."

12. Order No. 19 of the District Court in this proceeding, printed Record 131.

13. In lieu of the entire Order, the following summary of Order No. 40, printed Record 257, of the District Court will be printed in the Record:

"On June 22, 1933 the District Court entered Order No. 40. This Order appointed L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, principal debtor, and of the other intervening debtors."

14. Proof of Claim of the Missouri Pacific Railroad Company, against the New Orleans, Texas & Mexico Railway Company, being claim No. 1533 submitted August 22, 1933.

15. Order No. 235 of the District Court in this proceeding, September 26, 1934, printed Record 1669.

16. Exhibit No. 117 introduced in evidence at the hearing before the Interstate Commerce Commission on February 5, 1936, as appears from page 184 of the transcript of testimony at said hearing.

17. Exhibit No. 226 introduced in evidence at the hearing before the Interstate Commerce Commission on February 7, 1936, as appears from page 529 of the transcript of the testimony at said hearing.

18. That portion of the transcript of testimony taken at the hearing before the Interstate Commerce Commission on February 7, 1936, which begins at the beginning of the ninth line on page 529 of said transcript and ends at the end of the tenth line on page 531 of said transcript.

19. That portion of the transcript of testimony taken at the hearing before the Interstate Commerce Commission on February 7, 1936, which begins at the beginning of the second line on page 536 of said transcript and ends at the end of the third line on page 537 of said transcript.

20. Petition of the Irving Trust Company and the Walker Committee (representing certain bondholders of

New Orleans, Texas & Mexico Railway Co.) filed in the District Court in 1937 and Order of said Court pertaining to same.

21. Exhibit No. 800 introduced in evidence at the hearing before the Interstate Commerce Commission on September 29, 1937, as appears from page 4720 of the transcript of testimony at said hearing.

22. In lieu of printing the entire order of the United States Circuit Court of Appeals, Eighth Circuit, entered May 8, 1943 pertaining to all of the appeals from the original plan of reorganization of Missouri Pacific Railroad Company, approved by the District Court, there will be printed in the Record the following statement:

> "On May 8, 1943 the United States Circuit Court of Appeals, Eighth Circuit, in cases Nos. 12130-12136, inclusive, being the appeals by various parties from the first plan of reorganization of the Missouri Pacific Railroad Company approved by the District Court to the United States Circuit Court of Appeals, Eighth Circuit, ordered that these appeals be remanded to the District Court for the purpose of holding a hearing on confirmation of the plan of reorganization, and, if the District Court is so advised, for the purpose of referring the matter of said plan of reorganization back to the Interstate Commerce Commission for further consideration."

23. In lieu of the entire order, the following summary of Order No. 2303, printed Record 18561, of the District Court will be printed in the Record:

> "On May 10, 1943 the District Court entered Order No. 2303. This order directed that there would be a hearing before the Court on the 17th day of June, 1943 to determine whether the plan of reorganization of the Missouri Pacific Railroad Company, principal debtor, and of the other intervening debtors in the above entitled proceeding, should be confirmed, and to determine any and all other matters relevant thereto."

24. Opinion of the District Court No. 2356 and Order

of July 29, 1943, remanding the plan of reorganization dated April 9, 1940 to the Interstate Commerce Commission.

25. Order of the Interstate Commerce Commission setting proceeding for hearing in Brooklyn, New York, on October 19, 1943.

26. That portion of the transcript of testimony and exhibits received in evidence at the hearing in Brooklyn, New York, October 19, 20 and 21, 1943 before the Interstate Commerce Commission, which begins at page 5071 and ends at the end of the third line on page 5077 of said transcript, and which begins at line 10 of page 5142 and ends on the fifteenth line of page 5177.

27. There will be included in the Record the following statement:

"There is printed in a separate volume heretofore published by the Trustee, the Interstate Commerce Commission Supplemental Report, dated July 4, 1944; Third Supplemental Report of Interstate Commerce Commission, dated October 9, 1944; and Third Supplemental Order of October 9, 1944, constituting modified plan of reorganization."

28. Petition of Ernest Lee Foley filed in the District Court July 6, 1944; answers to said petition; stenographic transcript of hearing on said petition; and Order of Court denying said petition.

29. In lieu of the entire Orders, the following summary of Orders Nos. 2794 and 2794A, printed Record 22569 and 22765, of the District Court will be printed in the Record:

"On July 26, 1945 the District Court entered Order No. 2794. This Order authorized the Trustee to call for payment all bonds secured by the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions, First Mortgage now outstanding and unpaid. The total principal still outstanding on these bonds amounted to $24,183,600.00.

On October 12, 1945 the District Court entered Order No. 2794A. This Order authorized the Trustee to carry out the terms of Order No. 2794, which authorized the payment of the St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Division, First Mortgage Bonds, notwithstanding the appeal by Andrew W. Comstock from said Order No. 2794."

30. Order No. 2604 of the District Court dated October 31, 1944, insofar as same fixed the time within which objections to the plan of reorganization, with briefs in support thereof, might be filed on or before the 25th day of November, 1944, in Paragraph 1, setting the same for hearing on January 8, 1945 in Paragraph 8, and Paragraphs 1, 2 and 4 of Schedule B annexed to said Order.

31. Objections of Andrew W. Comstock filed on or about November 17, 1944 to plan of reorganization of Missouri Pacific Railroad Company.

32. Petition of Andrew W. Comstock filed in the District Court on or about November 17, 1944; answers to said petition; stenographic transcript of the hearing on said petition; and Order of Court denying said petition.

33. The following statement will be included with respect to the Appearances of Parties and Docket Entries at the Hearings described therein:

"Appearances of Parties and Docket Entries at the hearings held on Jannary 8, 1945 and thereafter by the District Court with respect to objections to the Plan of Reorganization of Missouri Pacific Railroad Company:

"The following appearances were made:

W. Lloyd Kitchel
C. W. McConaughy and
Jacob Chasnoff
Attorneys for Group of Institutional Investors First and Refunding Mortgage Bonds.

Shearman & Sterling,
By Sanford H. W. Freund,
Attorneys for Bondholders' Protective Committee, General Mortgage Four Percent Gold Bonds.

Marion B. Pierce and
Allen Oliver
Attorneys for Debtor.

James L. Homire
Emmet McCaffery and
John Raeburn Green
Attorneys for Reconstruction Finance Corporation.

Richard I. Gottlieb
Attorney for Committee of Holders of Preferred Stock.

Luther L. Walter
Attorney for Protective Committee for Common Stockholders of Missouri Pacific.

Everett Paul Griffin
Edward F. Calladay and
Kenneth McEwen
Attorneys for Protective Committee First Mortgage Bonds International Great Northern.

Thomas W. White and
William Sleator
Attorneys for Irving Trust Company; N.O.T. & M. Bondholders' Committee and Bankers Trust Company, as Trustee; Central Hanover Bank & Trust Company, Trustee for Central Branch Union Pacific Mortgage and St. Louis, Iron Mountain.

James E. Garstang
Attorney for Chemical Bank & Trust Company, Trustee under Trust Indenture of December 1, 1926.

Donovan, Leisure, Newton & Lumbard,
By Mr. George S. Leisure and
Mr. Davis Teitelbaum,
Attorneys for Alleghany Corporation.

Robert H. McRoberts
Attorney for St. Louis Union Trust Company, Trustee for Committee for Protection of Little Rock, Hot Springs and Western Bonds.

Harry Kirshbaum and
Edwin J. Beha
Attorneys for Convertible Bondholders' Group.

Hugh L. M. Cole,
Attorney for City Bank Farmers Trust Company, Trustee International-Great Northern First Mortgage.

Wright, Gordon, Zachry, Parlin & Cahill,
By Mr. Robert M. Becket
Attorneys for Chemical Bank & Trust Company, Trustee of Secured Serial 5-¼% Bonds.

S. Mayner Wallace
Attorney for New Orleans, Texas and Mexico Bondholders' Committee.

Blaney, Barrett, Bedal & Fairfield,
By Jesse W. Barrett
Attorneys for John M. Balliet, Intervenor.

Maxwell Brandwen and William H. Biggs,
Attorneys for Andrew W. Comstock.

Russell L. Dearmont and
Thomas T. Railey
Attorneys for Trustee.

"A portion of the Minutes of the Clerk of the United States District Court pertaining to the Hearings on January 8, 1945 and thereafter on objections to Plan of Reorganization of Missouri Pacific Railroad Company follows:

1945

Jan. 8 Proof of notice to parties in interest of hearing this day etc. together with affidavits (13) as to publication of notice of such hearing etc. filed by Trustee of debtor.

Jan. 8 Hearing on objections to plan of reorganization as approved by the ICC and on claims for equitable treatment thereunder commenced, but not being concluded at the hour of adjournment, further proceedings thereon postponed until tomorrow at ten A.M.

Jan. 9 Hearing on objections to proposed plan of reorganization as heretofore approved and certified by the ICC, and on claims for equitable treatment thereunder resumed. Affidavit of C. L. Peckham in support thereof and motion of Alleghany Corporation to expunge and dismiss objections numbered 2 to 33 incl., in schedule of objections to plan of reorganization of debtor filed by Andrew W. Comstock pursuant to order dated Nov. 31, 1944, filed and said motion argued, submitted and the ruling of the Court thereon reserved.

Jan. 9 Oral motion of Andrew W. Comstock that hearing on the claim of Missouri Pacific Railroad Company against NOTM Ry Co. be treated as a separate hearing and that the Court make separate findings of fact and conclusions of law and separate order thereon, made, argued, submitted and overruled; to which ruling of the Court movant asks and is granted an exception.

Jan. 9 Oral motion of Andrew W. Comstock for direction by the Court to the Trustee of NOT&M Ry. Co. to file objections to the proof of claim filed by Mo. Pac. Rd. Co. dated Aug. 28, 1933 asserted against NOT&M Ry Co., made, argued, submitted and overruled; to which ruling of the Court movant asks, and is granted an exception.

Jan. 9 Oral motion of Andrew W. Comstock for permission in the name of the Trustee of NOT&M Ry Co. to object to and contest the claim filed by Mo. Pac Rd Co against NOT&M Ry Co. made, argued, submitted and overruled; to which ruling of the Court movant asks and is granted an exception.

Jan. 9 Oral motion of Andrew W. Comstock that claimant Mo. Pac Rd Co be required to go forward with the presentation of evidence in support of its claim asserted against NOT&M Ry Co made, argued, submitted and overruled; to which ruling of the Court movant asks and is granted an exception.

Jan. 9 Oral motion of Andrew W. Comstock that the claim filed by Mo. Pac Rd Co. on August 24th, 1933 against NOT&M Ry Co be dismissed and disallowed made, argued, submitted and overruled; to which ruling of the Court movant asks and is granted an exception.

Jan. 9 Aforesaid hearing on objections to and claims for equitable treatment under plan of reorganization approved and certified to the Court by the ICC not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a.m.

Jan. 10 Hearing on objections to plan of reorganization heretofore approved and certified to the Court by the ICC and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a.m.

Jan. 11 Hearing on objections to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a.m.

Jan. 12 Hearing on exceptions to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings thereon postponed until Monday next at ten a.m.

Jan. 15 Hearing on objections to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment further proceedings on such hearing postponed until tomorrow at ten a.m.

Jan. 16 Hearing on objections to plan of reorganization heretofore approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of [odjournment,] further proceedings on such hearing postponed until tomorrow at ten a.m.

Jan. 17 Hearing on objections to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a.m.

Jan. 17 On oral motion of counsel for the Reconstruction Finance Corporation, order as to procedure on hearing on objections to plan of reorganization and claims for equitable treatment based thereon, filed.

Jan. 18 Hearing on objections to plan of reorganization as approved and certified to the Court by the ICC, and on claims for equitable treatment thereunder, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a.m.

Jan. 19 Hearing on objections to plan of reorganization as approved and certified to the Court [to] the ICC, and on claims for equitable treatment thereunder, resumed.

Jan. 19 Oral motion of Harry Kirshbaum, attorney for Convertible Bondholders Group, to dismiss Comstock objections 1, 2, 3, 4, 5, 6, 7, 8, 13, 19 and 20 made, argued and submitted.

Jan. 19 Oral motion of W. Lloyd Kitchel, attorney for Group of Institutional Holders of Missouri Pacific Rd. Co. first and refunding bonds, that entire record of proceedings be considered a part of the record on hearing of objections etc. made, argued, submitted and sustained. Separate oral

motion of W. Lloyd Kitchel, attorney for Group of Institutional Holders etc., to strike all evidence and testimony adduced on [Constock] Objection No. 19 and related objections made, argued and submitted. Oral motion of aforesaid movant to overrule Comstock objection No. 19 and related objections made, argued and submitted, and affidavit of Thomas T. Railey, Esq., in support of such motion, filed.

Jan. 19 Hearing on aforesaid objections to and claims for equitable treatment under plan of reorganization not being concluded at the hour of adjournment, further proceedings on such hearing postponed until March 19, 1945.

Jan. 19 Objector Comstock granted until Feb. 19, 1945 to submit brief in support of his objections other than those yet to be heard, and other counsel granted until March 5th in which to submit answering briefs.

Feb. 23 Affidavits of C. L. Peckham, et al, supplemental to the petition heretofore filed of Alleghany Corporation for reimbursement of expenses, together with certificate as to filing and service upon parties in interest, filed in triplicate.

Feb. 23 Affidavits in triplicate of Edward F. Hayes, et al, in support of petition for allowance heretofore filed of G. H. Walker, et al, as a Protective Committee for holders of First Mortgage Bonds and Income Bond of N. O. T. M. Ry. Co., together with certificate as to filing and proof of service upon parties in interest, filed.

Mar. 17 Order filed denying without prejudice (1) the motion made at the opening of hearing on certain objections of Andrew W. Comstock to Plan of Reorganization by George S. Leisure, counsel for Alleghany Corp., and renewed at the close of objector's case, that objections of Andrew W. Comstock numbered from 20 to 23, inclusive, be dismissed; (2) motion made at close of objector's

case by Harry Kirshbaum, counts 1 for Convertible Bondholders Group, that objections of Andrew W. Comstock numbered 1 to 8, inclusive, and numbered 13, 19 and 26, and the claim for equitable treatment based thereon be dismissed and stricken, as well as denying without prejudice said movant's demurrer to said objector's case; (3) Motion made at close of objector's case by W. Lloyd Kitchel, counsel for Group of Institutional Holders, and joined in by James L. Homire, counsel for RFC and Marion B. Pierce, counsel for debtor, to strike all testimony and evidence in connection with hearing on objections of Andrew W. Comstock numbered 19 and related objections, and claim for equitable treatment; and (4) motion made at close of objector's case by aforesaid W. Lloyd Kitchel, Esq., and joined in by James L. Homire and Marion B. Pierce, as counsel for aforesaid parties, requesting the overruling of Andrew W. [Constock's] objection numbered 19 and related objections and related claim for equitable treatment on the ground of laches.

Mar. 19 Hearing on Andrew W. Comstock objection No. 19 and related objections to, and claims for equitable treatment under proposed plan of reorganization as heretofore approved by the ICC resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a.m.

Mar. 20 Hearing on Andrew W. [Constock] objection No. 19 and related objections to, and claims for equitable treatment under plan of reorganization as heretofore approved by the ICC resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at 10 a.m.

Mar. 21 Hearing on Andrew W. Comstock [exception] No. 19 and related objections to, and claim for equitable treatment under plan of reorganization

heretofore approved by the ICC resumed, but not being concluded at the hour of adjournment, further proceedings postponed until tomorrow at ten a.m.

Mar. 22 Hearing on Andrew W. Comstock *exception* No. 19 and related objections to, and claims for equitable treatment under the plan of reorganization heretofore approved by the ICC resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a.m.

Mar. 23 Hearing on Andrew W. Comstock objection No. 19 and related objections to, and claims for equitable treatment under, plan of reorganization as heretofore approved by the ICC, resumed but not being concluded at the hour of adjournment, further proceedings on such hearing postponed until tomorrow at ten a.m.

Mar. 24 Hearing on [October] 19 and related objections to, and claims for *equitable under*, plan of reorganization for debtor heretofore approved by the ICC, of Andrew W. Comstock resumed and concluded. Thereupon Institutional Group of Bondholders of First and Refunding Mortgage Bonds, through its counsel, makes and submits to the Court its oral motion to dismiss Comstock Objection No. 19 and related objections, and claims for equitable treatment, on the merits for failure to make a case; as well as renews and submits its oral motion heretofore made to dismiss such objections because of laches, aforesaid motions being joined in by the RFC, through its counsel. Whereupon said motions are taken by the Court as submitted, and said Comstock Objection No. 19 and related objections, and claims for equitable treatment relative to aforesaid plan of reorganization are taken by the Court as submitted on briefs heretofore filed and to be hereafter filed; aforesaid objector granted 30 days within which to submit brief and proponents of said plan 30 days thereafter in which to submit answering briefs.

Mar. 24 Objections of Andrew W. Comstock Nos. 20 to 23 inclusive, to said plan of reorganization are [passed] for hearing to April 23rd, 1945, at ten a.m.

Mar. 24 Alleghany Corporation, through its counsel resubmits on the grounds therein stated, its motion with supporting affidavits heretofore filed to dismiss Comstock objection Nos. 20 to 23 inclusive."

34. Order of the District Court at the hearing on the plan of reorganization in January 1945 directing that there shall be a separate hearing and order as to Comstock's Objection 19 and related objections to the plan of reorganization.

35. The entire stenographic transcript of the hearings before the District Court held in January 1945 and thereafter on Objection No. 19 and related objections of Andrew W. Comstock to the plan of reorganization, except the material contained in the fifth line of page 578 of said transcript through the first line of page 781, inclusive of said transcript.

36. There will be included in the Record the following statement:

"There is printed in a separate volume all the exhibits filed by all parties to the hearings before the District Court held in January 1945 and thereafter on Objection No. 19 and related objections of Andrew W. Comstock to the Plan of Reorganization. Said separate volume is to be deemed as much of the Printed Record as if the matters contained therein were printed herein."

37. Opinion of the District Court approving the plan of reorganization No. 2866, dated December 21, 1945, printed Record 22993.

38. Order of the District Court No. 2866A, dated December 28, 1945, amending the aforesaid Opinion, printed Record 23027.

39. Order of the District Court No. 2866B, dated January 7, 1946 further amending the aforesaid Opinion, printed Record 23030-A.

40. Opinion of the District Court on said Plan of Reorganization as amended by the aforesaid two orders.

41. The following statement will be included with respect to the Appearances of Parties and Docket Entries at the hearings described therein:

"Appearances of Parties and Docket Entries relating to the Hearings held on January 18, 1945 by The District Court with respect to the order or orders proposed to be made by the District Court overruling objections to the Plan of Reorganization of Missouri Pacific Railroad Company and approving said Plan.

C. W. McConaughy and Jacob Chasnoff
Attorneys for Group of Institutional Investors First and Refunding Mortgage Bonds.

Marion B. Pierce
Attorney for Debtor

Luther L. Walter
Attorney for Protective Committee for Common Stockholders of Missouri Pacific

Everett Paul Griffin,
Attorney for Protective Committee of First Mortgage Bonds International Great Northern

William H. Biggs
Attorney for Andrew W. Comstock

Edwin J. Bean
Attorney for Convertible Bondholders Group

Thomas T. Railey
Attorney for Trustee

"A portion of the Docket Entries of the Clerk of the United States District Court Pertaining to the Hearings on January 18, 1946 with respect to the order or orders pro-

posed to be made by the District Court overruling objections to the Plan of Reorganization of Missouri Pacific Railroad Company and approving said Plan follow:

1946

Jan. 14 Draft of proposed Findings of Fact, Conclusions of Law and Order approving plan of reorganization, copy of notice of presentment thereof to the court on January 18, 1946 and affidavit as to service of foregoing on parties in interest, filed by counsel for Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Co.

Draft or proposed Findings of Fact, Conclusions of Law and Order overruling Comstock Objection No. 19 and related objections, copy of notice of presentment thereto to the Court on January 18, 1946, and [affidavid] as to service of foregoing on parties in interest filed by counsel for Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Co.

Jan. 18 Group of Institutional Holders of First and Refunding Mortgage Bonds of Missouri Pacific Railroad Co., pursuant to notice heretofore given to parties in interest, and after oral statement of counsel appearing for various parties in interest relative thereto, submits to the Court proposed findings of fact, conclusions of law and order approving plan of reorganization, as well as separate proposed findings of fact, conclusions of law, and order approving plan of reorganization, as well as separate proposed findings of fact, conclusions of law and order overruling Comstock's Objection 19 and related Objections.

Memorandum of Protective Committee for First Mortgage Bondholders of International Great Northern Railroad Co., requesting amendment of Court's opinion of Dec. 21, 1946, as well as sepa-

rate memorandum of aforesaid Protective Committee as to foregoing proposed order approving plan of reorganization, filed by leave.

Statement of aforesaid Group of Institutional Holders in amplification of point arising out of statement contained in designated portion of Court's opinion of Dec. 21, 1945 approving plan, filed by leave.

Jan. 22 Findings of fact, conclusions of law and order overruling Comstock's Objection 19 and related objections, filed.
Findings of fact, conclusions of law, and order approving plan of reorganization filed.

Jan. 23 Transcript of proceedings had before the Court January 18, 1946 on submission to the Court of proposed findings of fact, conclusions of law and order overruling Comstock's Objection 19 and related objections, and separate proposed findings of fact, conclusions of law and order approving plan of reorganization, filed."

42. A statement on behalf of Group of Institutional Investors, dated and filed January 18, 1946 at the aforesaid hearing in the District Court, with respect to the order or orders proposed to be made by the District Court overruling objections to the Plan of Reorganization and approving the Plan.

43. District Court's Findings of fact, conclusions of law and order, judgment and decree No. 2604-B, entered January 22, 1946, approving the plan of reorganization.

44. In lieu of the entire Order, the following summary of Order No. 2910, Printed Record 23415, of the District Court will be printed in the Record:

"On March 22, 1946 the District Court entered Order No. 2910. This Order directed that the Trustee shall have an additional period of six months, beginning April 1, 1946, within which to consider and de-

termine which of the leases, contracts and arrangements between the debtors, or any of them, and any other parties, should be adopted or should be renounced or disaffirmed."

45. Petitions of Guy A. Thompson, Trustee of Missouri Pacific Railroad Company for authority to pay claims of the Reconstruction Finance Corporation, Railroad Credit Corporation and the secured banks; answer of said petitions; stenographic transcripts of the hearings on said petitions and Orders of the District Court approving the first two of said petitions.

46. In lieu of the entire Order, the following summary of an Order of the District Court on the 10th day of May, 1946 will be printed in the Record:

"On May 10, 1946, on application of the aforesaid appellants, the District Court directed the Clerk of said District Court to forward a number of the original records of said Court to the United States Circuit Court of Appeals, Eighth Circuit, in lieu of said appellants' filing copies of same. A copy of said Order designating said records is on file with the Clerk of the United States Circuit Court of Appeals, Eighth Circuit."

WILLIAM H. BIGGS,
Attorney for Appellants.

(Endorsed): Filed in U. S. Circuit Court of Appeals on August 16, 1946.

(Order of United States Circuit Court of Appeals to include Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of New Orleans, Texas & Mexico Railway Company et al., as Appellees.)

United States Circuit Court of Appeals
Eighth Circuit.
May Term, 1946.

Saturday, August 31, 1946.

Edmund Wright, as Chairman, et al., as the Protective Committee of International Great Northern Railroad Company First Mortgage Bondholders,

Appellants,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,367.

Missouri Pacific Railroad Company, Debtor,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,368.

Charles H. Thornton and A. J. Sevin, constituting a Protective Committee for the Holders of Common Stock of Missouri Pacific Railroad Company,

Appellants,

vs.

Group of Institutional Investors holding First and Refunding 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,369.

Andrew W. Comstock, a holder of Missouri Pacific Railroad [——] 5¼% Secured Gold Bonds on behalf of himself and others, etc.,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

No. 13,371.

Gerald Axelrod, et al.,

Appellants,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,372.

St. Louis Union Trust Company, as Trustee, etc., et al.,

Appellants,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,373.

Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount of said bonds,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,376.

New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, representing himself and others, etc.,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,377.

Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and others, etc.,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,378.

and

Andrew W. Comstock, Appellant,

vs.

Guy A. Thompson, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor.

No. 13,379.

Appeals from the District Court of the United States for the Eastern District of Missouri.

The Court having considered the motion of Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, and G. H. Walker, et al., as a Committee representing Holders of First Mortgage Bonds and Income Bonds of New Orleans, Texas & Mexico Railway Company, and the motion of Bondholders Protective Committee for Gen-

eral Mortgage Bonds of Missouri Pacific Railroad Company, It is, in pursuance thereof, now here Ordered that

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company,

G. H. Walker, Willard V. King, B. A. Tompkins and George E. Warren, as a Committee representing Holders of First Mortgage Bonds and Income Bonds of New Orleans, Texas & Mexico Railway Company, and

Bondholders Protective Committee for General Mortgage Bonds of Missouri Pacific Railroad Company,

be included as appellees in these causes.

August 31, 1946.

(Order of United States Circuit Court of Appeals authorizing Appellants to print one record, times fixed for filing designations of appellees, as to printing record and for printing and filing briefs; Reconstruction Finance Corporation stricken as an appellee.)

United States Circuit Court of Appeals
Eighth Circuit.
May Term, 1946.

Saturday, August 31, 1946.

Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount of said bonds,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,376.

New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, representing himself and others, etc.,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,377.

Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and others, etc.,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,378.

and

Andrew W. Comstock,

Appellant,

vs.

Guy A. Thompson, Trustee of New Orleans, Texas & Mexico Railway Company, et al.

No. 13,379.

Appeals from the District Court of the United States for the Eastern District of Missouri.

This matter having come on to be heard on the 31st day of August, 1946, upon the motion of William H. Biggs, as Attorney for the appellants, in the above four appeals, for an order authorizing the printing and filing of a consolidated record and for an order fixing the time for the filing of the record and briefs, and for other relief as set

out in said motion, and the Court having duly considered said motion, and the statement of Mr. Biggs in open Court, and also the telegram of Mr. W. Lloyd Kitchel, attorney for Group of Institutional Holders of First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company, opposing the motion,

It Is Now here Ordered by this Court:

1. The aforesaid four appellants are authorized to print one record covering the four appeals relating to the validity of the claim of the Missouri Pacific Railroad Company against the New Orleans, Texas and Mexico Railway Company.

2. The appellees may submit to and file with the Clerk of this Court not later than September 15, 1946, their designations of any additional matters to be included in the printed record.

3. The four appellants shall have the entire record so designated by all parties printed not later than November 15, 1946.

4. The four appellants shall prepare, print, serve and file their brief or briefs within thirty (30) days after record has been printed.

5. The appellees shall prepare, print, serve and file their brief or briefs within thirty (30) days after date of filing of brief or briefs of appellants.

6. The four appellants shall prepare, print, serve and file their reply brief or briefs, if any, within twenty (20) days after date of filing of brief or briefs of appellees.

7. The four appellants are authorized to delete the Reconstruction Finance Corporation from their heretofore filed designation of appellees.

August 31, 1946.

(Designation by Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company of Additional Matters to be included in the printed record.)

(Filed in U. S. Circuit Court of Appeals on September 13, 1946.)

United States Circuit Court of Appeals

Eighth Circuit.

May Term, 1946.

Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount of said bonds,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,376

New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, representing himself and others, etc.,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,377

Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and others, etc.,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.

No. 13,378

and

Andrew W. Comstock,

Appellant,

vs.

Guy A. Thompson, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor, et al.

No. 13,379

Appeals from the District Court of the United States for the Eastern District of Missouri.

To the Honorable E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit:

Pursuant to an Order of this Court entered in the above entitled appeals on August 31, 1946, the Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, one of the appellees herein, hereby designates for inclusion in the printed record on appeal in the above entitled appeals the following additional portions of the record in said appeals, to wit:

1. The appellants' and appellees' designations of the portions of the record, proceedings and evidence to be contained in the record on appeal in the above entitled appeals. (Not their designations of matters to be included in the printed record.)

2. The Order of the United States Circuit Court of Appeals for the Eighth Circuit, entered on May 8, 1943, in Causes Nos. 12130-12136, inclusive, which Order remanded said Causes to the District Court for the purpose of holding a hearing on confirmation of the Plan of Reorganization.

3. All of the exhibits, whether offered in evidence or marked only for identification, at the hearings before the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri in proceedings entitled "In the Matter of Missouri Pacific Railroad Company, Debtor, No. 6935," held in January and March, 1945, on Objection 19 and related objections of Andrew W. Comstock to the Plan of Reorganization. Said exhibits may be printed in a separate volume.

This appellee hereby objects to the inclusion of any of the following matters in the printed record in these appeals for the reasons hereinafter stated:

1. The statement proposed in Item 7 of the appellants' designation of matters to be included in the printed record, for the reason that said statement is incorrect.

2. The statement proposed in Item 11 of the appellants' designation of matters to be included in the printed record, for the reason that this appellee is advised that said statement is incorrect.

3. The statement proposed in Item 22 of the appellants' designation of matters to be included in the printed record, for the reason that said statement is incomplete.

4. The statement proposed in Item 27 of the appellants' designation of matters to be included in the printed record, for the following reasons:

(a) The designations of the contents of the record on appeal herein included only portions of the Supplemental Report dated July 4, 1944 and the Third Supplemental Report dated October 9, 1944 of the Interstate Commerce Commission, and failed to designate

the Third Supplemental Order of October 9, 1944 of the Interstate Commerce Commission or any part thereof, and

(b) Any portions of said Supplemental Reports and Order upon which the appellants are entitled to rely in these appeals ought to be included in the printed record on appeal.

5. The matters specified in Item 26 of the appellants' designation of matters to be included in the printed record, for the reason that neither the transcript of testimony nor exhibits received in evidence at the hearing in Brooklyn, New York, on October 19, 20 and 21, 1943 before the Interstate Commerce Commission were designated as a part of the record on appeal in these appeals.

6. The statement proposed in Item 44 of the appellants' designation of matters to be included in the printed record, for the reason that the Order referred to in said proposed statement was entered after the entry of Order No. 2604-A from which the above entitled appeals are taken.

7. The matters specified in Item 45 of the appellants' designation of matters to be included in the printed record, for the following reasons:

(a) The petitions, answers, hearings and orders therein specified occurred after the entry of Order No. 2604-A from which the above entitled appeals are taken;

(b) The petition of Guy A. Thompson, Trustee of Missouri Pacific Railroad Company, for authority to pay the claims of the secured banks, the answer to said petition and the hearings upon said petition were not designated as matters to be included in the record in the above entitled appeals; and

(c) Said Item 45 is incomplete in that it omits the Order of the District Court entered upon said petition for authority to pay the claims of the secured banks.

This appellee hereby further objects to the failure of the appellants herein to designate the whole of the Supple-

mental Report of the Interstate Commerce Commission dated July 4, 1944, the Third Supplemental Report of the Interstate Commerce Commission dated October 9, 1944 and the Supplemental Order of the Interstate Commerce Commission dated October 9, 1944, and to include the whole of said Reports and Order in the printed record on appeal as required by Rule 10 (b) of the Rules of this Court.

This appellee hereby reserves the right to make each and every of the aforesaid objections upon the hearing of the above entitled appeals.

Yours, etc.,

W. LLOYD KITCHEL,
CHARLES W. McCONAUGHY,
Attorneys for the Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, one of the above named appellees.

(Endorsed): Filed in U. S. Circuit Court of Appeals on September 13, 1946.

(Designation of Andrew W. Comstock of Matters to Be Contained in Transcript on Appeal from Order No. 2604B)

(Filed May 13, 1946.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Missouri Pacific Railroad Company, Debtor.	In Proceedings for the Reorganization of a Railroad No. 6935

To James J. O'Connor, Clerk, and to all appellants, appellees and parties:

Please Take Notice that Andrew W. Comstock hereby serves and files, pursuant to Rule 75(a) and (k) of the

Rules of Civil Procedure of the District Court of the United States, a designation of the portions of the record, proceedings and evidence which are to be contained in the Record on Appeal from the order entered herein on January 22, 1946, approving the Plan of Reorganization of the Debtor, being Order No. 2604B, the following items being designated in addition to those being designated by the Debtor and other appellants:

1. Objections of Andrew W. Comstock to Plan of Reorganization contained in 3rd Supplemental Report and Order of the Interstate Commerce Commission of October 9, 1944.

2. Statement of Group of Institutional Holders holding First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company, filed January 18, 1946.

3. Notice of Appeal of Andrew W. Comstock filed February 20, 1946.

4. Bond of Andrew W. Comstock filed February 20, 1946.

5. Portions of the stenographic transcript of hearing on objections to Plan of Reorganization, as approved by Interstate Commerce Commission, and on claims for equitable treatment thereunder held on January 8, 1945, and subsequent dates, during the September Term, 1944, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, to-wit, pages 1 to 4 (a), inclusive, and pages 578 to 782, inclusive.

6. Petition of Guy A. Thompson, Trustee for authority to pay claims of the Reconstruction Finance Corporation and the Railroad Credit Corporation; answers to said petition; stenographic transcript of the hearing on said petition; and order of this Court.

7. This designation of additional record.

8. Statement of points upon which appellant intends to rely.

9. Clerk's certificates as to mailing of notice of appeal.

10. Proof of service of said statement of points on appeal and said designation of record.

11. This Court's Order of May 10, 1946 re transmittal of record to the United States Circuit Court of Appeals, Eighth Circuit.

WM. H. BIGGS,
BIGGS, CURTIS AND CROSSEN,
Attorneys for Appellant.

Vol. III

TRANSCRIPT OF RECORD

(Pages 20723 to 22970)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, A HOLDER OF MISSOURI PACIFIC RAILROAD COMPANY 5½% SECURED SERIAL GOLD BONDS, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 452

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 453

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 454

ANDREW W. COMSTOCK, PETITIONER,

vs.

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED NOVEMBER 24, 1947.

CERTIORARI GRANTED JANUARY 12, 1948.

United States Circuit Court of Appeals,
EIGHTH CIRCUIT.

No. 13,376. In Bankruptcy.

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5½% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,377. In Bankruptcy.

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5½% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,378. In Bankruptcy.

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5½% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,379. In Bankruptcy.

ANDREW W. COMSTOCK,
Appellant,

vs.

GUY A. THOMPSON, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor, et al.,
Appellees.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED MAY 21, 1943.

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(Missouri Pacific Reorganization Proceedings.)

INTERSTATE COMMERCE COMMISSION.

Finance Docket No. 9918.

MISSOURI PACIFIC RAILROAD COMPANY REORGANIZATION.

MODIFIED PLAN OF REORGANIZATION AND FURTHER FINDINGS OF THE COMMISSION.

Including

(1) **Supplemental Report of the Commission of July 4, 1944, p. 20731.**

(2) **Third Supplemental Report of the Commission of October 9, 1944, p. 20881.**

(3) **Third Supplemental Order of the Commission of October 9, 1944 (Constituting Modified Plan of Reorganization), p. 20892.**

(Note: The Commission's Second Supplemental Order of July 4, 1944, is not here printed, as it, together with Orders entered January 10, 1940 and April 9, 1940, are expressly revoked and superseded by the Commission's Order of October 9, 1944.)

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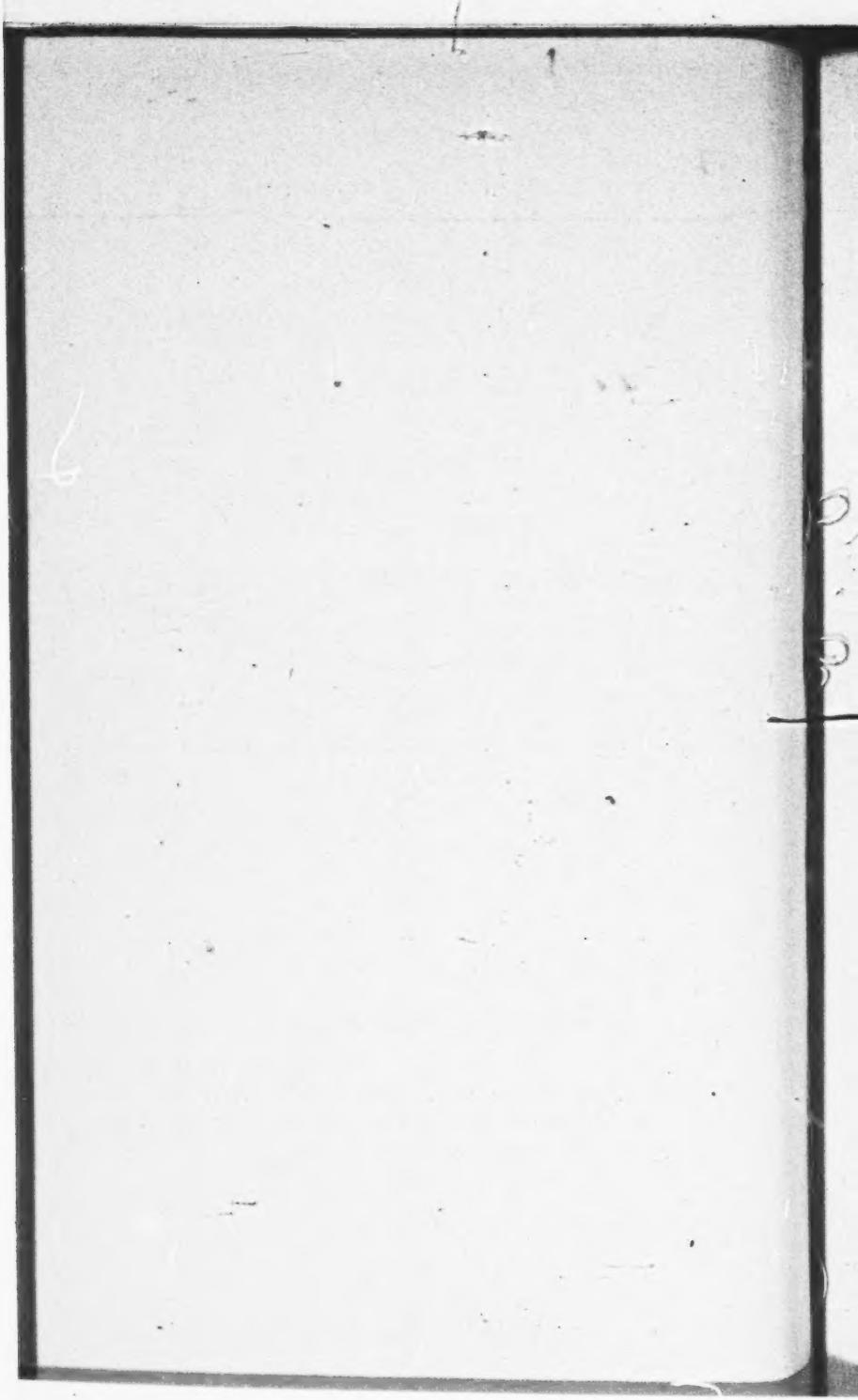

INTERSTATE COMMERCE COMMISSION

Washington

Finance Docket No. 9918

MISSOURI PACIFIC RAILROAD COMPANY
REORGANIZATION

SUMMARY OF SUPPLEMENTAL REPORT

July 4, 1944.

This report approves extensive modifications of the plan of reorganization of the Missouri Pacific Railroad Company approved by the Commission on January 10, 1940, as modified on April 9, 1940.

The plan as herein approved substantially adopts, although with some exceptions and with some changes, the provisions of the so-called "compromise plan" introduced in evidence at the further hearing in this proceeding in October, 1943.

The major modifications of the Commission's plan of 1940, are:

(a) The effective date is changed from January 1, 1940, to January 1, 1943, with provisions for change to a later date or dates under certain conditions.

(b) There is distributed among senior classes of creditors the sum of $30,574,095 of cash, the greater

part of which is allotted in compromise settlements of parts of their claims for accrued and unpaid interest. Optional offers of additional reorganization securities are provided for senior creditors not accepting the compromise cash offers.

(c) The parts of the claims of Reconstruction Finance Corporation and of J. P. Morgan and affiliated banks representing interest accrued and unpaid on their claims since the date of the filing by the debtors of their petitions in bankruptcy are settled with cash on a basis of a 4 percent per annum interest rate instead of 3½ percent as provided in the "compromise plan". The other compromise cash offers of the "compromise plan" are not changed.

(d) Provision is made for the distribution of cash among creditors prior to consummation of the plan.

(e) Warrants entitling the holders thereof, for a period of 10 years after consummation of the plan, to purchase new class-B no-par common stock at a price of $100 per share, are offered junior creditors (and stockholders of the New Orleans, Texas & Mexico Railway Company) in addition to the reorganization securities to which such creditors and stockholders are entitled under the plan. Provisions of the compromise plan for issue of warrants to Missouri Pacific Railroad Company preferred and common stockholders are not approved.

(f) The duration of the voting trust is decreased from 10 years, as in the Commission and compromise plans, to 5 years and the method of selection of the voting trustees in such plans is changed to provide that the court shall designate them.

(g) There are various other minor changes from the former Commission's and the compromise plans.

(h) The provisions of both plans for selection of the five reorganization managers, and the first board of directors of the reorganized company are changed.

Following are comparisons of the capitalization and annual charges under the plan as modified by this supplemental report and as approved by the Commission on April 9, 1940.

Capitalization

	Plan as modified	Former Commission plan
Fixed-interest debt		
Equip. obligations, undisturbed	$ 15,755,000	$ 15,755,000 [2]
Plaza-Ol. Bldg. 1st-mtg. bonds	591,000	591,000 [2]
10-yr. collateral 3½% notes	10,352,000	14,433,500
First-mtg. bonds	166,809,000	158,700,500
Total	193,507,000	189,480,000
Contingent-interest debt		
General-mortgage bonds	159,175,000	120,661,000
Total debt	352,682,000	310,141,000
Stock		
Preferred stock	57,717,000	115,501,000
Common stock	150,081,000	136,756,400
Total stock	207,798,000	252,257,400
Total capitalization	560,480,000 [1]	562,398,400

[1] Plus such amount of common stock as may be allotted in satisfaction of general unsecured claims. In addition there will be issued warrants, exercisable for 10 years, for purchase of 494,699 shares of class-B no-par common stock at a price of $100 per share, plus such additional warrants as may be issued to holders of general unsecured claims.

[2] For purposes of comparison, amounts shown are those outstanding as of January 1, 1943, the effective date of the plan as modified, instead of January 1, 1940, the effective date of the plan approved in 1940. The difference is an increase of about $2,000,000.

Annual Charges

	Plan as modified	Former Commission plan
Fixed interest	$ 7,289,735	$ 7,186,137
Contingent Charges		
Capital expend. fund	None (due to sufficiency of depreciation charges)	580,000 (excess over rate provided by modified plan)
First-mtg. sink. fund	417,023	None
Contingent interest	7,367,202	5,327,940
Contingent sinking funds	795,876	603,305
Total contingent chgs.	8,580,101	6,511,245
Total fixed and contingent charges	15,869,836	13,697,382
Dividends on preferred stock	2,885,841	5,775,050
Total annual charges prior to common stock dividends	18,755,677	19,472,432

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INTERSTATE COMMERCE COMMISSION

Finance Docket No. 9918

MISSOURI PACIFIC RAILROAD COMPANY REORGANIZATION

Submitted December 1, 1943. Decided July 4, 1944.

Upon further hearing, the plan of reorganization for the Missouri Pacific Railroad Company, et al., pursuant to section 77 of the Bankruptcy Act, as amended, further modified and approved.[1]

Appearances as in prior reports and also Russell L. Dearmont, Marion B. Pierce, J. L. Oliver, C. W. McConaughy, James L. Homire, Emmet McCaffery, John E. Westerlund, Clyde W. Sorrell, Louis F. Schwartz, Jr., Carl O. Hoffman, Raymond S. Blessing, Owen D. Nee, Edward J. Bean, Harry Kirshbaum, Clarence M. Mulholland, Frank L. Mulholland, Willard H. McEwen, Jarvis J. O'Brien, Edward F. Colladay, Kenneth McEwen, Everett Paul Griffin, Alexander M. Lewis, William H. Biggs, David Teitelbaum, Malcolm Fooshee, A. Baisley Sheridan, W. V. A. Waterman, William J. Kane, Edward G. Buckland, Robert E. Smith, Francesco Ebell, Charles H. Thornton, S. Mayner Wallace, and O. R. McGuire.

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1 For previous reports see 249 I. C. C. 650; 252 I. C. C. 818; and 254 I. C. C. .... and ....

SUPPLEMENTAL REPORT OF THE COMMISSION

By the Commission:

By our report and order of January 10, 1940, 239 I. C. C. 7, we approved, pursuant to the provisions of section 77 of the Bankruptcy Act, U. S. Code Title 11, sec. 205, a plan of reorganization for the Missouri Pacific Railroad Company, hereinafter called the Missouri Pacific, the New Orleans, Texas & Mexico Railway Company, hereinafter called the New Orleans, the International-Great Northern Railroad Company, hereinafter called the International, and their subsidiary railroad companies, except the Missouri-Illinois Railroad Company as to which debtor we refused approval of any plan of reorganization without prejudice to a continuation of these proceedings for its later reorganization. A certified copy of the report and order was filed on January 19, 1940, in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in which court proceedings for the reorganization of the debtors herein are pending. By supplemental report and order of April 9, 1940, 240 I. C. C. 15, upon petitions filed by various parties in interest, we modified the order of January 10, 1940, supra, in certain particulars and, on April 22, 1940, filed in the court a certified copy of the supplemental report and order. Thereafter, hearings were held before the court on objections to the plan. The judge rendered a decision dated July 12, 1941, approving the plan and overruling all objections thereto. The dissatisfied interests thereupon took appeals to the United States Circuit Court of Appeals for

the Eighth Circuit. On October 9, 1941, we ordered the plan submitted to a vote as contemplated by subsection (e) of section 77 of the Bankruptcy Act. On March 28, 1942, we certified to the district court the results of the balloting, showing that, of the 16 classes of claimants voting, the approved plan was rejected by 5 junior classes of creditors and 1 class of senior creditors, the latter comprising the holders of $1,140,000, principal amount, of first-mortgage bonds of the Little Rock & Hot Springs Western Railroad Company.

Appeals were argued and briefs submitted to the United States Circuit Court of Appeals aforesaid but no ruling on the merits of the objections was made by that court. During the pendency of this proceeding in the circuit court, the United States Supreme Court, on March 15, 1943, handed down its decisions in two railroad reorganization cases, viz., *Ecker, et al., Constituting Institutional Bondholders Committee v. Western Pacific Railroad Corporation, et al.*, 318 U. S. 448, and *Group of Institutional Investors, et al., v. Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, 318 U. S. 523. These cases will hereinafter be referred to, respectively, as the *Western Pacific* and *Milwaukee* cases.

Thereafter, the aforesaid United States Circuit Court, by its order of May 8, 1943, remanded the appeals to the district court, hereinafter referred to as the court. Further specific objections were then filed in the court and a hearing on the objections was held on July 16, 1943. After this hearing the court by its order of July 29, 1943, referred the case back to us, pursuant to subsection (e) of section 77 of the Bank-

ruptcy Act, as amended, for further proceedings in accordance with the applicable provisions of said section 77, including the consideration of modifications of the plan or the proposal of new plans.

In his opinion accompanying the order, the judge stated two reasons for his action: First, that we had not given consideration to the question of whether senior creditors would receive compensation under the plan for the loss of their seniority rights, the necessity for a consideration of this matter being a point stressed by the United States Supreme Court in the *Milwaukee* case, and, second, to provide us with a further opportunity to consider whether, in view of the changed conditions arising since the formulation of the plan, the plan can now be improved. In his memorandum the judge further expressed the opinion that we should give consideration to the matter of whether the valuation of the properties of the debtors should not be revised since "recent earnings together with the enhanced value of the road, might justify a higher valuation of the property, and at the same time be compatible with the public interest." The judge also stated that it would be well for us to fix another effective date of a reorganization plan when one is certified, regardless of what other changes we might make in the approved plan and expressed the opinion that cash which has accumulated in the treasuries of the debtors might be used to liquidate some or all of certain preferred claims, referring particularly to five underlying mortgages, the claim of the Reconstruction Finance Corporation and the claims of J. P. Morgan & Co. and associates for loans made to the debtors.

By five orders, all entered September 18, 1943, the court directed the trustee of the debtor to pay out of

cash on hand on or before November 1, 1943, the principal of, and unpaid interest to, that date, on bonds constituting the entire issues outstanding under the underlying mortgages referred to above, these being:

Missouri Pacific Railway Company 3rd mortgage.

Pacific Railroad Company (of Missouri) St. Louis City real estate renewal mortgage.

Pacific Railroad Company (of Missouri) Carondelet Branch 1st mortgage.

Pacific Railroad Company (of Missouri) 2nd mortgage.

Pacific Railroad Company (of Missouri) 1st mortgage.

The total cash required to meet these payments is $15,021,009.[2]

By order of the same date the court also directed the payment on or before November 1, 1943, of 30 percent of the principal amount of the bonds outstanding under the St. Louis, Iron Mt. & Southern Ry. Co. River & Gulf divisions first mortgage, hereinafter called the River and Gulf bonds, together with interest to that date on all bonds outstanding under the mortgage. The sum of the cash payments on this mortgage is $11,058,560.[3]

Three other orders entered simultaneously with those referred to directed the payment of two 6-month interest accumulations amounting to $13,159,525 on all outstanding Missouri Pacific first and refunding mort-

[2] As of March 31, 1944, all but $172,500, principal amount, of these bonds had been redeemed.

[3] As of March 31, 1944, the holders of all but $352,000, principal amount, of these bonds had received the 30-percent payment of principal.

gage bonds (except those held by Western Coal & Mining Company), three 6-month interest accumulations amounting to $3,425,025 on all New Orleans first mortgage and income bonds, and two 6-month interest accumulations amounting to $1,610,000 on International first-mortgage bonds, the total of all such interest payments being $18,194,550.

In the case of all three of these interest payments the court's orders directed that, in any plan of reorganization which may be finally approved and confirmed, the reorganization managers should, with the court's approval, cause the cash payments to be applied, first, as a credit against cash payments, if any, to be made to the present security holders, secondly, any balance remaining should be applied as a credit upon interest accrued to the latest maturity date on the new bonds which the present bondholders would receive under the terms of any such plan in the order of their priority or, third, in such manner as may be appropriate in the light of the terms of any such plan. If no plan is finally approved and confirmed then the payments are to be credited as payments of interest on the respective bonds, except that, as to the New Orleans first-mortgage bonds and Missouri Pacific first and refunding bonds pledged with the Reconstruction Finance Corporation, hereinafter called the Finance Corporation, and as to the first and refunding bonds pledged with J. P. Morgan & Co. and associates, the payments are to be applied upon the notes held by those creditors, which are secured in part by such bonds.

The total of all cash payments to be made pursuant to all nine orders of the court is $44,274,119. Under

the plan, satisfaction of the portions of the several claims represented by these cash payments would have been made substantially in their entireties by new securities issuable upon reorganization.

We assigned the reorganization proceeding for further hearing. At the hearing before us on October 19, 1943, a plan of reorganization, dated September 27, 1943, was received in evidence, offered jointly by the protective committee representing holders of approximately $64,133,500 out of a total of $223,190,500, principal amount, of first and refunding mortgage 5-percent gold bonds of the Missouri Pacific Railroad Company, hereinafter referred to as the first and refunding committee, the committee representing $6,047,000 of a total of $40,615,900 (excluding $1,900,000 pledged with the Finance Corporation) of New Orleans, Texas & Mexico Railway Company first-mortgage and income bonds, hereinafter referred to as the New Orleans committee, the protective committee representing holders of general-mortgage 4-percent bonds of Missouri Pacific Railroad Company, hereinafter referred to as the general-mortgage committee, the Missouri Pacific Railroad Company, debtor, and Alleghany Corporation, owner of $11,152,000 of a total of $45,493,000 of Missouri Pacific convertible bonds (excluding $899,000 pledged with the Finance Corporation), $4,410,000 par value of Missouri Pacific preferred stock of a total issue of $70,190,100 and $52,290,000 par value of common stock of a total outstanding issue of $81,314,343, par value. Also agreeing to this plan is the bank syndicate holding a collaterally secured claim of about $8,472,000 against the Missouri Pacific. Substantially all the evidence received at the further hearing was in

support of, or in opposition to this plan. Subsequent to the close of the further hearing, briefs were submitted. The plan approved by us on April 9, 1940 will be hereinafter referred to as the Commission plan and that introduced in evidence at the further hearing as the compromise plan.

POSITIONS OF THE PARTIES WITH RESPECT TO THE COMPROMISE PLAN

In addition to the proponents of the compromise plan, its provisions are generally supported (on the condition that they be approved by us without substantial change,—a proviso in which the proponents also join) by the trustee under International's first mortgage, by Savings Banks Trust Company, representing $1,190,000 of New Orleans first-mortgage bonds, and by the protective committee representing $12,318,000 of a total of $34,508,000, principal amount, (excluding $40,000 owned by Western Coal & Mining Company) of River and Gulf bonds. This latter committee expresses no opinion as to the compromise plan as a whole but is willing to accept its provisions in so far as the interests of the bondholders whom it represents are concerned. The trustees under the trust indenture securing the Missouri Pacific 5¼-percent secured serial gold bonds and under the mortgages securing Missouri Pacific 5½-percent convertible gold bonds, and New Orleans first-mortgage bonds have expressed the intention of not opposing the compromise plan. Objections to the compromise plan generally or to one or more of its provisions are advanced by the protective committee for Little Rock & Hot Springs Western Railroad Company first-mortgage bonds and by the trustee under that mortgage, by the

successor trustee under the Central Branch Union Pacific Railway Company first mortgage and by holders of $313,000, principal amount, of the bonds issued thereunder, by a protective committee representing approximately $3,000,000, principal amount, of $28,750,000, principal amount, of International first-mortgage bonds, by a group of owners of about $50,000, principal amount, of Missouri Pacific convertible bonds, by The Railroad Credit Corporation, by the Finance Corporation, by several individuals owning miscellaneous bonds and stocks of the debtors, and by a protective committee for Missouri Pacific common stockholders. The Railway Labor Executives Association seeks the inclusion in the compromise plan or in any other plan which we may approve of certain provisions affecting the debtor's employees.

It will be seen that while there is very substantial support of the compromise plan the opposition to it or to certain of its provisions is not negligible.[4] These objections will be referred to later in our discussion of the terms of the compromise plan.

RECENT AND PROSPECTIVE EARNINGS

Following are the operating results, as reported by the trustee of the debtors, for each of the years 1939-1942, inclusive, and for the period January-September

[4] In his opinion of July 29, 1943, the judge stated: "However, it is readily conceded that if substantial agreement can be had, a more desirable end will have been reached (i. e., than by confirmation of a plan over its veto by some of the creditors, even if constituting a large group, or by dismissal of the reorganization proceeding). * * * It is alleged by certain of the parties appearing here that a compromise plan has been contrived which will meet the approval of substantially all the parties. Other interest(s) have taken exception to this statement. Nevertheless, if a close approach to unanimity among the groups can be had on the compromise plan, and if the Commission finds that the public interest will be served by such a plan, unquestionably that would offer the best solution to the problem."

1943, inclusive, separately for the Missouri Pacific, New Orleans and International groups and for the system. Earnings prior to 1939 are stated in our original report of January 10, 1940, *supra*.

For the year 1939, total railway operating revenues of the Missouri Pacific were $83,115,545, New Orleans $14,899,012, International $11,416,814 and system $109,431,371, total railway operating expenses Missouri Pacific $65,570,587, New Orleans $10,319,276, International $9,976,289, and system $85,866,153, operating ratio Missouri Pacific 78.9 percent, New Orleans 69.3 percent, International 87.4 percent, and system 78.5 percent, income available for payment of interest Missouri Pacific $7,762,725, New Orleans $2,559,256, International $169,680 (deficit), and system $10,097,423, net income (or loss) Missouri Pacific $13,084,309 (deficit), New Orleans $243,580 (deficit), International $2,970,082 (deficit), and system $15,583,665 (deficit).

For the year 1940, total railway operating revenues of the Missouri Pacific were $87,177,275, New Orleans $14,556,843, International $11,349,852, and system $113,083,970, total railway operating expenses Missouri Pacific $67,127,420, New Orleans $10,400,758, International $9,880,166, and system $87,408,344, operating ratio Missouri Pacific 77 percent, New Orleans 71.4 percent, International 87.1 percent, and system 77.3 percent, income available for payment of interest Missouri Pacific $11,276,729, New Orleans $2,268,633, International $6,964 (deficit), and system $13,495,717, net income (or loss) Missouri Pacific $9,553,618 (deficit), New Orleans $234,789 (deficit), International $2,810,183 (deficit), and system $12,160,490 (deficit).

For the year 1941, total railway operating revenues of the Missouri Pacific were $111,954,706, New Orleans $18,019,862, International $14,075,033, and system $144,049,600, total railway operating expenses Missouri Pacific $76,645,796, New Orleans $11,582,278, International $11,145,785, and system $99,373,859, operating ratio Missouri Pacific 68.5 percent, New Orleans 64.3 percent, International 79.2 percent, and system 69 percent, income available for payment of interest Missouri Pacific $25,028,933, New Orleans $4,206,360, International $1,457,451, and system $30,607,244, net income (or loss) Missouri Pacific $4,233,729, New Orleans $1,414,315, International $1,343,113 (deficit), and system $4,988,614.

For the year 1942, total railway operating revenues of the Missouri Pacific were $178,497,278, New Orleans $31,313,786, International $21,760,522, and system $231,571,587, total railway operating expenses Missouri Pacific $101,131,152, New Orleans $16,277,014, International $13,988,869, and system $131,397,035, operating ratio Missouri Pacific 56.7 percent, New Orleans 52 percent, International 64.3 percent, and system 56.7 percent, income available for payment of interest Missouri Pacific $51,490,959, New Orleans $8,935,461, International $5,950,197, and system $66,205,617, net income Missouri Pacific $30,666,257, New Orleans $6,146,031, International $3,162,528, and system $40,573,000.

For the first 9 months, January-September, inclusive, 1943, total railway operating revenues of the Missouri Pacific were $166,597,722, New Orleans $30,663,927, International $22,032,196, and system $219,293,845, total railway operating expenses of the Mis-

souri Pacific $90,091,369, New Orleans $15,023,428, International $13,429,934, and system $118,544,731, operating ratio Missouri Pacific 54.1 percent, New Orleans 49 percent, International 61 percent, and system 54.1 percent, income available to the Missouri Pacific for payment of interest $32,058,508, New Orleans $4,732,481, and International $3,351,423, net income of the Missouri Pacific $16,464,381, New Orleans $2,642,388, and International $1,263,324. Compared with the same period in 1942, total railway operating revenues for the later period are greater than in the former but the amounts available for payment of interest and net income are considerably less, except in the case of the International where the disparity is relatively small.

No system statements for 1943 of income available for payment of interest and net income are of record for any period subsequent to the first 7 months January-July, inclusive, the system amount at the end of that period being $32,514,678 and net income $17,581,670.

For the 5-year period 1938-1942, inclusive, the yearly average amount available for payment of interest for the Missouri Pacific was $20,368,882, New Orleans $3,971,089, International $1,332,128, and system $25,601,287. These compare with the trustee's forecast for a normal year as stated in our report of January 10, 1940, *supra*, of $17,644,718 for the Missouri Pacific, $2,118,032 for the New Orleans, $1,494,354 for the International (these separate amounts for each of the three groups being before certain rather minor adjustments), and $22,059,052 for the system (after such adjustments and excluding intercompany items).

For the entire year 1943 with 8 months' operating results known, the trustee of the debtors estimates that the amount available to the Missouri Pacific for payment of interest will be $40,804,000, New Orleans $6,090,000, International $3,968,000, and system $50,862,000. These earnings represent decreases from the earnings experienced in 1942, but increases in about the same proportions over the results of operation in 1941.

The trustee of the debtor furnished an income estimate for the year 1944 for each of the three groups and for the entire system, predicated on the assumptions (1) that, as to freight revenues, a two-ocean war will be progressed on an intensified scale throughout 1943 and 1944, resulting in a continued movement of a large volume of military equipment and supplies, that during 1944 there will be a reduction in oil, gasoline and construction materials on all lines and that the May 15, 1943 level of freight rates will continue through 1944, (2) that, as to passenger revenues, the heavy movement of military personnel will continue throughout 1944 and that priority civilian travel will not be invoked, (3) that the present volume of mail and express will continue through 1944, and (4) that, as to operating expenses, higher rates of pay for operating and nonoperating forces will be approved by the Government and that current prices of material will continue. It is assumed in the estimate that the present basis of Federal income and excess profits taxes will continue and the estimate is based on existing capitalization and interest charges. Included in nonoperating income is a dividend of $1,185,150 on preferred stock of The Texas and Pacific Railway Company. This estimate for 1944 shows total railway

operating revenues for the Missouri Pacific $211,800,000, New Orleans $32,300,000, International $25,110,000, and system $269,210,000, total railway operating expenses for the Missouri Pacific $120,874,000, New Orleans $18,172,000, International $16,640,000, and system $155,686,000, and income available for payment of interest for the Missouri Pacific $34,547,000, New Orleans $5,072,000, International $3,810,000, and system $43,429,000.

The testimony of three economists, Leonard P. Ayres, testifying for the Missouri Pacific, debtor, John H. Parmelee for Alleghany Corporation, and Clyde R. Chambers for a group of Missouri Pacific preferred stockholders, was in general agreement that operating revenues will continue at a relatively high level for a considerable period after cessation of the war, except for some decrease during a limited period of transition from a war-time to a peace-time economy. In support of their positions, these witnesses relied in part upon the experience of carriers after the former world war as compared to pre-war operations at that time, the world demand for goods which will be needed after the ending of the present war and statistical studies showing the share of traffic borne by the railroads as compared with other forms of transportation and the share of total railroad traffic more or less uniformly obtained in the past by the Missouri Pacific system.

The director of industrial development for the trustee of the Missouri Pacific testified as to the development of many large war industries in the Missouri Pacific system territory, including steel mills, blast furnaces, aluminum, magnesium, synthetic rubber, aircraft, plastics, chemical plants, cotton mills and can-

ning factories. Some industries he believes may be displaced by the manufacture of synthetic products but, in his opinion, the present industries will attempt to improve their existing products or convert to some kindred product, and some industries, now converted to war production, such as the automobile industry, will restore existing plants. He believes that some gasoline and fuel oil now being transported by railroad may be diverted to pipe lines and traffic in saw mill timber may fall off due to depletion but he pointed out that reforestration of cut-over lands in the case of pulpwood is now being initiated. The witness was unable to give an estimate of the amount of increased earnings which he believes will be enjoyed by the debtor as a result of the increased industrial development which he expects will be experienced in the future.

H. M. Johnson, general freight traffic manager for the trustee of the debtor, testified at the court hearing on July 16, 1943, that, since January 1940, 263 new industries have been located on the lines of the Missouri Pacific, 27 of which are camp schools, air schools, and air fields, 2 are miscellaneous Government plants, 31 are war project plants, 9 are plants expanded by war work and 194 are commercial industries, the great majority of which were established to serve or augument war plants located on the line as, for example, 11 storage yards for construction equipment, gravel pits and store yards, all of which ceased operating when construction of the war plants was completed. Additionally, 163 industries were located at points served by the Missouri Pacific in common with other railroads. On the lines of the New Orleans, 182 new industries have been established, of which 6 are camp

schools and air fields, 23 are war project plants, 3 expansion programs of war project plants, and 150 commercial industries, the majority of which was established to augument the war effort. Additionally, the New Orleans has access to 24 other industries located at common points with other railroads. On the lines of the International, 82 new industries have been established, comprising 7 camp schools and air fields, 2 war project plants and 73 commercial plants, built primarily to aid the war effort. Additionally, the International reaches 19 plants at competitive points with other railroads. The witness pointed out that while the Missouri Pacific system could serve such plants located on other lines, the latter also have the opportunity to secure traffic from industries on the Missouri Pacific system lines.

DEBTOR'S ASSETS AND LIABILITIES

As of July 31, 1943, the trustee of the Missouri Pacific reported total investments of $663,154,081, New Orleans $80,483,152, International $60,028,229, and the system $773,032,796, current assets Missouri Pacific $141,612,681, including a total of cash, temporary cash investments and special deposits of $114,860,918, New Orleans $24,059,934, including cash and similar equivalents of $18,931,523, International $16,165,259, including cash and equivalents of $10,837,182, and system $180,784,062, including cash and equivalents of $144,629,623, deferred assets Missouri Pacific $740,931, New Orleans $12,268, International $29,748, and system $782,947, unadjusted debits Missouri Pacific $1,496,651, New Orleans $700,956, International $1,901,763, and system $4,416,434, total of all assets Missouri Pacific

$807,004,344, New Orleans $105,256,309, International $78,124,999, and system $959,016,239.

As of the same date liabilities were as follows: stock Missouri Pacific $154,639,600, New Orleans $14,832,900, International $7,500,000, and system $155,497,899, long-term debt Missouri Pacific $432,734,720, New Orleans $59,460,673, International $50,804,292, and system $521,735,818; current liabilities Missouri Pacific $46,-046,148, including accrued tax liability of $32,989,464, New Orleans $12,159,130, with tax liability of $8,249,-243, International $8,979,286, with tax liability of $3,439,160, and system $66,658,894, with tax liability of $44,677,867; deferred liabilities (consisting almost entirely of interest in default) Missouri Pacific $166,-463,759, New Orleans $10,268,328, International $27,-980,074, and system $204,066,655; unadjusted credits (the greater part consisting of accrued depreciation on equipment) Missouri Pacific $74,933,181, New Orleans $9,521,433, International $7,399,878, and system $91,643,412, and deficits in total corporate surplus Missouri Pacific $67,813,064, New Orleans $986,154, International $24,538,531, and system $80,586,440.

From December 31, 1939, the day prior to the effective date of the Commission plan, to July 31, 1943, gross additions and betterments to road and to equipment of the Missouri Pacific (exclusive of two subsidiaries, Natchez & Louisiana Railway Transfer Company and Kansas-Missouri Elevator Company) have increased by $14,206,756 and $20,009,683, respectively, New Orleans $2,411,465 and $2,087,513, respectively, International $1,145,973 and $1,346,810, respectively, and system $17,837,648 and $23,443,906, respectively.

In the same period investment of the Missouri Pacific in road and equipment increased $22,322,770, New Orleans by $2,501,098, International by $1,175,822, and the system by $25,999,689. During this period, the system also acquired and entered in its balance sheet accounts as "investment in affiliated companies—unpledged", the St. Joseph terminal properties, the purchase price being $3,600,000 plus $999,186 advances to affiliated companies.

CASH BALANCES AND CASH REQUIREMENTS

As of December 31, 1939, the day preceding the effective date of the Commission plan, the Missouri Pacific had a cash balance of $12,922,114 and cash on deposit with mortgage trustees of $1,405,034, a total of $14,327,148, the New Orleans had cash of $1,332,162 and similar deposits of $67,214, a total of $1,399,376, the International $402,391 cash and $197,835 deposits, a total of $600,226, and the system $14,656,666 and $1,670,083, a total of $16,326,749.

As of December 31, 1942, the day preceding the proposed effective date of the compromise plan, the Missouri Pacific had cash of $34,875,624, U. S. Treasury tax notes $27,000,000, special deposits for deferred maintenance $1,564,445 and cash deposits with mortgage trustees $4,105,374, the total of all cash and equivalents being $67,545,443; the New Orleans had cash $4,353,420, tax notes $3,500,000, deferred maintenance-special deposits $218,718 and deposits with trustees $252,426, a total of cash and equivalents of $8,324,564; the International had cash of $4,389,625, deferred maintenance-special deposits $157,757, and deposits

with trustees $283,331, a total of cash and equivalents of $4,830,713. The totals for the system were cash $43,618,669, tax notes $30,500,000, deferred maintenance deposits $1,940,920 and deposits with trustees $4,641,131, the total of all cash and equivalents being $80,700,720.

As of September 30, 1943, the Missouri Pacific had cash of $19,676,046, U. S. Treasury tax notes $96,375,000, deferred maintenance-special deposits $2,275,723, of which all but $723 was invested in tax notes, a reserve fund for U. S. Government transportation bills $1,725,000 invested in tax notes, and deposits with trustees $4,777,067, the total of cash and equivalents being $124,828,836; the New Orleans had cash of $6,950,678, tax notes $13,588,000, deferred maintenance-special deposits $222,578, of which $60,000 was invested in tax notes, reserve fund for U. S. Government transportation bills $210,000, and deposits with trustees $280,662, the total of all cash and equivalents being $21,251,918; the International had cash of $3,358,591, tax notes $7,602,000, deferred maintenance-special deposits $205,400, of which $77,000 was invested in tax notes, a reserve fund for U. S. Government transportation bills $210,000, and deposits with trustees $361,888, the total of all cash and equivalents being $11,737,879; the system had cash of $29,985,315, tax notes $117,565,000, special deposits for deferred maintenance $2,703,701, of which $2,412,000 was invested in tax notes, reserve fund for U. S. Government transportation bills $2,145,000, of which $1,725,000 was invested in tax notes, and deposits with trustees $5,419,617, the total for the system of all cash and equivalents being $157,818,633.

The trustee of the debtors has furnished a cash forecast from the foregoing date of September 30, 1943, through December 31, 1943, for each of the groups and for the system. Before the deduction of reserves to be set up for the purposes, which will be later described, the trustee of the debtors estimates that net cash receipts or accumulation from October 1 to December 31 plus estimated deposits with mortgage trustees during the same period will, for the Missouri Pacific, be $11,041,500, New Orleans $2,302,000, International $2,091,000, and system $15,434,500. Adding these amounts to the cash and equivalents on hand on September 30, 1943, as previously stated, results in estimated totals of cash and equivalents on hand on December 31, 1943, as follows: Missouri Pacific $135,870,336, New Orleans $23,553,918, International $13,828,879, and system $173,253,133.

From these totals the trustee of the debtors estimates that reserves must be provided for the following purposes, the respective amounts being here stated for the system only: (1) Working fund and contingencies, $20,000,000, (2) all taxes accrued and not paid $56,786,000, (3) estimated net wage increase $1,824,933, (4) accumulated deferred maintenance July 1, 1942-December 31, 1943, $4,896,000, (5) anticipated land grant deductions accumulated January 1-December 31, 1943, $3,210,000, (6) new locomotives and freight cars to be delivered and paid for prior to December 31, 1943, on order and authorized by the War Production Board, $5,620,605, and (7) cash payment of principal and interest on certain obligations authorized by the court, as hereinbefore described, $44,274,119. After provision for all of these reserves the

balances of cash remaining on December 31, 1943, are estimated by the debtor to be as follows: Missouri Pacific $27,590,595, New Orleans $5,176,220, International $3,874,661, and system $36,641,476.

In explanation of the estimate of $20,000,000 for system working fund and contingencies, C. D. Peet, assistant chief accounting and financial officer for the trustee of the debtors, testified that this amount is more or less arbitrarily divided $15,000,000 to the Missouri Pacific, $3,000,000 to the New Orleans, and $2,000,000 to the International, that the total was arrived at by starting with 1 month's operating expenses (less non-cash items) and adding amounts to provide for any deficiencies which might occur in the subsequently provided reserves for taxes and land grant deductions, to provide cash necessary to retain the debtor's position in the reorganized Denver & Rio Grande Western Railroad Company, and generally to meet conditions involved in the future transition period from a war-time to a peace-time economy, such as the necessity of having cash available to modernize the railroad facilities in order to lower costs and attract business.

William Wyer, an expert employed by the proponents to negotiate and draw up the compromise plan, considers that $20,000,000 for working fund and contingencies is excessive and that as of October 1943 probably $11,500,000 or $12,000,000 cash working capital would suffice in view of the volume of business then prevailing and which had increased since the preceding December. As of December 31, 1942, Wyer considers $9,500,000 sufficient for working capital and the negotiators of the compromise plan used that sum in

determining the amount of excess cash available for distribution in carrying out certain cash offers included in that plan. In using this sum, Wyer followed an estimate in the same amount furnished him in November 1942, by the debtor's chief accounting and financial officer. Wyer considers that Peet's estimate of $20,000,000 contains duplication of other reserves separately provided for. Wyer made no deductions for these other purposes in arriving at his computation of excess cash available for the compromise plan, believing, at the time of his estimate, that the additional items could be taken care of out of 1943 earnings, an assumption which he contends has proven true. Neither he nor Peet deducted any amount for reorganization expenses, Wyer contending that they can be met similarly out of current earnings.

In formulating the compromise plan, Wyer and his associates in the negotiations started with the premise that the following amounts of excess cash would be available as of January 1, 1943, for distribution to creditors: Missouri Pacific $21,806,401, New Orleans $3,611,846, International $3,662,956, and total for system $29,081,203. These are approximately the same amounts as those necessary to put the compromise plan into effect as of the same date, which is the proposed effective date of the plan. These amounts are after deduction of all the principal of, and accrued unpaid interest on, the five underlying mortgages and 30 percent of the principal of the River and Gulf Mortgage, assuming that such payments would be made prior to January 1, 1944, but before deduction of the interest payments totaling $18,194,550 on Missouri Pacific first and refunding bonds, New Orleans first-mort-

gage and income bonds, and International first-mortgage bonds, paid or to be paid as directed by the court's orders of September 18, 1943, hereinbefore referred to. These interest payments would be applicable to the cash payments required under the compromise plan.

Before deduction of all of the above cash payments both of principal and interest made or to be made pursuant to orders of the court, the excess cash available as of December 31, 1942 amounted to $47,044,620 for the Missouri Pacific, $3,611,846 for the New Orleans, and $3,662,956 for the International, or a system total of $54,319,422.

Wyer stated that the cash required to be available on January 1, 1944, to put the compromise plan into effect and bring it down to that date, including the making of all payments during 1943 under the terms of that plan, including dividends on the proposed new preferred stock, would be $26,842,489, and that Peet's forecast of net cash receipts and accumulations during the year 1943 less the cash reserves which Peet considers necessary to maintain, including his estimate of $20,000,000 for working fund and contingencies, shows that the system's excess cash available at the end of 1943 would be $36,641,476, or nearly $10,000,000 more than required to bring the compromise plan down to that date.

It is our opinion and we find that there will be sufficient cash available for working capital for the reorganized company as of its commencement of operations and that, in view of the latest available cash balance of the system, there would be excess cash on hand sufficient to make the cash payments provided

for under the compromise plan as of its effective date plus the amounts necessary to put the plan into effect as of a later date and additionally, that, as of December 31, 1943, an additional substantial amount of excess cash can be considered as available for additional cash payments to creditors or for dividends on the new stock proposed to be issued under the compromise plan and payments into the retirement fund as proposed in that plan or for other proper corporate purposes.

FREE ASSETS

At the further hearing before us in October 1943, Wyer and Peet each introduced evidence with respect to investments of the debtors not pledged as security for any of their obligations.

Wyer found the book value as of December 31, 1942, of all such investments, comprising stocks, bonds, notes and advances held by the Missouri Pacific to be $17,738,627, of which $3,538,634 represented stock, $111,690 bonds, $1,638,459 notes, and $12,449,844 advances, New Orleans $2,088,648, of which $644,812 represented stock, $1,000 bonds, $158,479 notes, and $1,284,357 advances, International $269,266, of which $7,044 represented stock, and $262,222 advances, and total $20,096,541, of which $4,190,490 represented stock, $112,690 bonds, $1,796,938 notes, and $13,996,423 advances. As of April 1, 1933, he stated the book values of such investments of the Missouri Pacific as $12,939,873 ($1,249,618 stock, $210,119 bonds, $1,466,697 notes and $10,013,439 advances), New Orleans $1,897,817 ($893,676 stock, $47,340 bonds, and $956,801 advances), International $460,126 ($7,690 stock,

$200,000 notes and $252,436 advances), and total $15,297,816 ($2,150,984 stock, $257,459 bonds, $1,666,697 notes, and $11,222,676 advances).

Peet furnished estimated values as of the same date of unpledged investments. He did not, however, place any values on unpledged advances by the debtors to affiliated companies. In the case of the Missouri Pacific these advances amounted to $12,268,196, book value, of which $2,637,458 were advances to companies involved in the compromise plan. In the case of the New Orleans the advances amounted to $1,367,314, book value, and, in the case of the International to $288,163, book value, in each case wholly comprising advances to companies included in the plan. The total book value of advances by all three groups was $13,923,673. Peet's estimated values of unpledged investments also excluded certain stocks and notes of companies involved in the compromise plan held by the Missouri Pacific totaling $595,298, book value, and 11 shares of International stock held by the New Orleans of a book value of $11. Peet testified that, with some exceptions, his estimates of the value of unpledged investments are based on the net worth of the issuing companies as reflected by their books. In the case of terminal companies he pointed out that the estimated values which he placed upon their securities could only be realized by the holders of such securities if the terminal companies should dissolve and their assets should bring the amounts shown on their books and if their liabilities were disposed of at their book values. He stated that his estimated values of the stocks of terminal companies are rather intangible and do not include the value of the terminal companies to

the proprietary companies in creating traffic and earnings for the latter.

Peet's estimates of the values of unpledged investments as so limited and with such exclusions are as follows: Missouri Pacific $7,023,908, of which nearly $6,000,000 represents the estimated value of stock, New Orleans $1,495,448, of which all but about $59,000 is stock, and International $6,856, all stock, the total being $8,526,212. If there be added to these amounts, the book value of advances and, in the case of the Missouri Pacific, the book value of stocks and notes of companies involved in the compromise plan, the totals become, Missouri Pacific $19,887,402, New Orleans $2,862,762, International $295,019, and total $23,045,183.

Peet also introduced an exhibit showing that dividends and interest received on unpledged stock, bonds and notes from April 1, 1933, the date of the filing of the petitions in bankruptcy by the three principal debtors, and December 31, 1942, the day preceding the effective date of the compromise plan, amounted to $557,184 in the case of the Missouri Pacific, $11,353 in the case of the New Orleans, and $2,373 in the case of the International, the system total being $570,910. He also furnished a statement of the amounts of repayments of unpledged bonds and notes between the same dates, the amounts of the repayments of those held by the Missouri Pacific totaling $250,049, New Orleans $65,000, International none, and the total $315,049.

The record does not show what disposition was made of this cash by the trustees, i. e., whether used for capital expenditures or for ordinary expenses of the trust estate, and what part, if any, remains unex-

pended. Thus it is impossible to know whether and to what extent the reorganized company will benefit. Unsecured creditors do not have a lien on cash coming into the hands of the trustees of the debtors, at the time of the institution of the bankruptcy proceedings or subsequent thereto, whether comprising repayments of, or dividends or interest on unpledged bonds and notes, or otherwise, and such cash is available for use by the trustees for any proper purpose in the administration and operation of the trust estate without accountability to the unsecured creditors. See *In re The Chicago, R. I. & P. Ry. Co., Debtor*, 50 F. Supp. 835.

Further, in connection with the subject of free assets, Wyer furnished an analysis of the net current asset position of the Missouri Pacific as of March 31, 1933, the date of the filing of its bankruptcy petition. His analysis shows that the Missouri Pacific on that date had current assets of $19,155,035 and current liabilities (including tax liabilities) of $43,069,574, net current liabilities being $23,914,539. Alleghany Corporation contends on brief that, while $599,275 of special deposits held by banks for principal and interest on funded debt and $552,485 of interest and dividends receivable on pledged securities should be deducted from current assets, leaving $18,003,275 remaining, a sum of $32,046,441 should be deducted from current liabilities in determining the amount of net current assets not subject to mortgage liens or priority claims, leaving $11,023,133 of current liabilities remaining. The above sum of $32,046,441 comprises the principal of the Finance Corporation, Railroad Credit Corporation and bank loans and interest on all claims of secured creditors. Alleghany Corporation contends that

this deduction from current liabilities should be made since those creditors are dealt with in the compromise plan on the basis of their respective interests in mortgaged or pledged assets. It also contends that, of the other current liabilities, the only items which appear as of that time to have been entitled to priority of payment over unsecured creditors are pay rolls of $1,740,471 and taxes settled in 1936 for $590,136. Deducting only these priority items from current assets of $18,003,275 leaves the sum of about $15,670,000 which Alleghany Corporation contends is not applicable to settlement of secured or priority claims but to unsecured claims including those included in current liabilities. Another intervener, the trustee under the Missouri Pacific convertible-bond indenture, estimates that current assets of the Missouri Pacific exceeded current liabilities by approximately $10,500,000 as of April 1, 1933, after deducting from current liabilities $25,800,000 of Finance Corporation, Railroad Credit Corporation and bank loans and $5,900,000 of unpaid accrued interest.

It is contended by these parties that net current assets as of April 1, 1933, the date of commencement of the bankruptcy proceeding, were not subject to the lien of the Missouri Pacific mortgages since the first and refunding and general mortgages expressly authorize the mortgagor to remain in possession of all tolls, income, rents, revenues, issues, and profits of the mortgaged property until default. On the other hand, the first and refunding committee by brief refers to an order of the court entered on June 12, 1936, authorizing the trustee of the debtor to enter into a settlement agreement with the U. S. Treasury Department

in respect of certain income taxes and to make certain payments pursuant to that settlement, imposing a lien by way of subrogation upon unpledged assets to secure the mortgage creditors whose funds were used to effect the settlement.

What we stated above with respect to cash in the hands of the trustee of the debtors applies equally, in our opinion, to other forms of current assets held by him. It is our opinion that none of such current assets even to the extent, if any, of their excess over current liabilities, either at the date of the filing of the bankruptcy petition or subsequently, can be considered as held for the exclusive benefit of unsecured creditors, in the sense that unpledged investments may be deemed to be held.

The first and refunding committee contends that, as to all so-called "unpledged assets" which have been acquired since the institution of the bankruptcy proceeding, the demands made upon the court by various first-mortgage creditors for sequestration of income, including one filed by the first and refunding mortgage trustees on June 7, 1933, have the effect of subjecting practically all Missouri Pacific income since the institution of the bankruptcy proceeding to the liens of the various senior mortgages and that any of such funds expended by the trustee of the debtor for the acquisition of any so-called "unpledged assets" had the effect likewise of subjecting the assets so acquired to the liens of the senior mortgages. In this connection, Wyer produced an exhibit to show that the book value of unpledged investments owned by the Missouri Pacific increased by $4,798,754 between April 1, 1933 and December 31, 1942, New Orleans by $190,831, and the

International's investments decreased $190,860, the total in unpledged investments of the system between these dates being $4,798,725, compared to total book value of $20,096,541 of all unpledged investments owned by the system on December 31, 1942, of which $17,738,627 represented the book value of the Missouri Pacific's investments. Of the increase of $4,798,725, $3,200,000 represents investments in the Missouri terminals properties which were not paid for out of income received during trusteeship but were acquired in settlement of the so-called Terminal Shares litigation by which the trustee of the Missouri Pacific sought to recover $3,200,000 which had been paid by Missouri Pacific on account of the purchase price of the properties prior to the institution of the bankruptcy proceeding.

The unpledged investments of the Missouri Pacific Railroad Company, aside from advances, consist of shares of stock of over 40 corporations, many of them terminal companies, bonds of 4 companies, secured notes of 5 companies, and unsecured notes of 2 companies, and as above stated, Peet estimates a total value for them, exclusive of notes of $400,000 of the New Orleans, of $7,023,908, of which the estimated value of the stock is $5,904,039. These investments obviously are difficult of appraisement. For the purpose of this proceeding we accept Peet's estimate. To such sum we believe should be added, for the purpose of ascertaining the total value of unpledged investments of the Missouri Pacific group, the value of such investments in obligations of such debtors in this proceeding as are not included in the Missouri Pacific group. This will result in the addition of an amount

of about $400,000, representing the book value of notes of the New Orleans held by the Missouri Pacific, the resulting total being $7,423,908. Advances to affiliated companies total $12,268,196 but of this amount the sum of $2,427,458 represents advances to other companies of the group and $5,585,577 advances to the Missouri Pacific Transportation Company for purchase of stock in the Missouri Pacific Railroad Company. The latter company has set up a reserve of nearly $3,500,000 for loss on these advances. We conclude and find that, with deduction for investments made subsequent to the date on which the bankruptcy petition was filed (except as to investments in the Missouri terminals), the total value of all unpledged investments of the Missouri Pacific group is about $10,000,000 but that they are not of such a nature as to warrant the issuance in respect of such assets in the reorganization of anything other than an evidence of ownership in the reorganized company.

Applying the same principles to the New Orleans, we find the value of such investments, including unsecured advances at their book value of $1,367,314, to be about $2,500,000, and such investments of the International to be about $250,000, such assets also being of a kind entitling those having claims against them to receive only common stock in recognition of their claims.

It may be added that certain of the junior creditors also contend that the excess in value, if any, of collateral securing the Finance Corporation, Railroad Credit Corporation and bank loans also fall within the category of free assets. The value of this collateral is discussed hereinafter. The Railroad Credit Corpo-

ration has a second lien upon all collateral securing the Finance Corporation loans. Such of the collateral as has a market value is subject to wide fluctuations in price. The record does not warrant a finding of any excess value of the collateral securing these loans over the amount of the loans.

COMPROMISE PLAN

Cash distributions.—The compromise plan provides that cash may be distributed to creditors from time to time upon order of the court pending consummation of the plan and shall be credited *pro tanto* against (a) cash payable under the plan and/or (b) interest and dividends accrued on new securities up to the "interest adjustment date," as the reorganization managers, with the approval of the court, shall determine. The interest-adjustment date is the date (to be fixed by the reorganization managers with the approval of the court) to which interest and dividends on new securities are to be paid in cash at the time of the consummation of the plan. Different interest-adjustment dates may be fixed for different classes of new securities. There are appropriate provisions for the refunding by a creditor, who under the plan will receive alternative offers of cash or securities and who shall elect to take the securities, of any excess cash distributed to him over that to which he is entitled, including cash receivable by him under the terms of the plan (exclusive of the alternative offer) and interest and dividends on his new securities.

The plan also provides that, if the total cash authorized to be distributed on claims of any class after December 31, 1942, and prior to the consummation of

the plan (after deducting any amount required to be refunded because of election to accept any alternative offer in securities), shall exceed the sum of (a) the total amount of cash payable on claims of such class as set forth in the plan, and (b) interest and dividends accrued on new securities distributable to claims of such class from the effective date up to the interest-adjustment date and (c) if the effective date be changed pursuant to the provisions of the plan (as hereinafter described), interest on the principal of the claims of such class from December 31, 1942 to the new effective date, such excess payment shall be deemed to constitute a retirement, *pro tanto*, at their principal amount, of the most senior class of new securities issuable in respect of claims of such class under the plan (collateral-trust notes being deemed senior to first-mortgage bonds for this purpose and for the purposes of the next following paragraph describing the effective date) and the aggregate amount of such class of new securities actually issued under the plan shall be correspondingly reduced. Any such excess cash payments shall be deemed to be credits against sinking-fund requirements for the issue so reduced.

Effective date.—The compromise plan provides for an effective date of January 1, 1943, which, by vote of a majority of the reorganization managers, including the member to be designated by the junior creditors as later described, with the approval of the court, may be changed to any later January 1 (not later than the consummation of the plan) if, but only if, system earnings available for interest for each calendar year between December 31, 1942, and the effective date

shall have exceeded by at least $5,000,000 all interest accruing for such years on claims of creditors against the debtors (other than claims of general creditors against the International) outstanding during such calendar year.

If the effective date is so changed:

(a) There shall be paid in cash to the holders of those classes of claims entitled under the plan to receive any new first-mortgage bonds or collateral-trust notes an amount equal to the interest accruing on all such claims, excluding equipment-trust obligations and Plaza-Olive Building bonds, for the period from December 31, 1942 to the new effective date; *provided, however,* that in the case of the Finance Corporation and the bank debt interest shall be paid only at the rate of 3½ percent per annum;

(b) there shall be applied to the reduction of the debt to be issued under the plan an amount of cash sufficient to reduce such debt by a principal amount equal to interest accruing from December 31, 1942 to the effective date on all classes of claims (other than claims of general creditors against the International) not entitled under the plan to receive first-mortgage bonds or collateral-trust notes. Such reduction of debt may be effected (1) by payment of all or any part of any of the claims mentioned in clause (a) above and/or (2) by the purchase or redemption and retirement of debt to be issued under the plan, all as the reorganization managers shall determine;

(c) the number of shares of class-A common stock and class-B common stock issuable under the plan shall be increased in the aggregate by an amount equal (at $100 per share) to interest

accruing from December 31, 1942 to the effective date on all classes of claims (other than claims of general creditors against the International) not entitled under the plan to receive first-mortgage bonds or collateral-trust notes; and each such class shall receive (in addition to other securities allotted under the plan) a number of shares of common stock, class A or B, equal (at $100 per share) to the interest accruing on such claims from December 31, 1942 to the effective date.

In making the distribution of additional common stock pursuant to subparagraph (c) above, any class of creditors allotted no class B common stock under the plan shall receive its additional allotment in class A, those allotted only class B shall receive class B and those allotted both classes shall receive proportional increases in their respective allotments of both classes.

New securities issuable under the plan as hereinafter described, shall be dated as of the effective date or, in the discretion of the reorganization managers and with the court's approval, any class of new securities may be dated as of the interest-adjustment date therefor, but in the latter case, creditors who receive new securities of such class shall receive the same amounts of cash and be entitled to the same rights in respect of accruals and accumulations as if the new securities of such class had been dated as of the effective date. Where, in this report, we refer to the effective date of the compromise plan, our reference, unless otherwise indicated, will be only to January 1, 1943.

The compromise plan provides that the carrying out of the plan shall not require any retroactive

change in the operations of the trustee of the debtor's estate or in the reports made to us or in any other reports or returns for the period prior to the date when such new securities are issued.

General basis of the plan.—The following principles are stated by the proponents of the compromise plan as those upon which it is based: (1) The same amount of fixed charges as provided by the Commission plan is observed, (2) total permissible capitalization is the same, (3) the same relative treatment as between security issues is generally observed, with some exceptions, and (4) the surplus cash used in the plan is the amount considered available as of December 31, 1942, the day preceding the compromise plan's effective date. The negotiators state that they propose to use the cash, as well as they can, to improve the treatment of all classes of security holders over that accorded them by the Commission plan.

The surplus cash so to be used, the amount of which has been hereinbefore specified, is the amount remaining after deducting Federal income taxes and estimated necessary cash working capital from the total amounts of cash in the treasuries of the three railroad groups of the system on December 31, 1942. We have hereinbefore discussed the amounts of excess cash considered as available to each of the three groups of the system lines and to the system, including a discussion of the basis upon which $9,500,000 was arrived at by the framers of the plan as adequately representing the requirements of the system for cash working capital.

The excess cash available to each group of the system lines is allocated to the group. Since it seemed

clear to the proponents of the plan that the cash was earned almost entirely by the properties subject to the liens of the mortgages securing the five underlying bond issues, the River & Gulf bonds, the Cairo & Thebes bonds, the Boonville, St. Louis & Southern bonds, the Central Branch Union Pacific bonds, and the first and refunding bonds, all of which are senior obligations of the Missouri Pacific group, and the first-mortgage and income bonds of the New Orleans, and the first-mortgage bonds of the International, the amounts of cash available in each of the three group treasuries were applied exclusively to those claims, except for cash in the Missouri Pacific treasury and about $1,700 from the International treasury, used in connection with the Finance Corporation, Railroad Credit Corporation and bank loans. After the cash payments of principal on the underlying bonds and River & Gulf bonds as ordered by the court, the great bulk of the $21,806,401 of excess cash remaining in the Missouri Pacific treasury was applied to the first and refunding bonds, about $5,300,000, however, being applied to the Finance Corporation and bank loans.

While recognizing that the interest on the various system obligations is equally secured and entitled to equal treatment in reorganization with the unpaid principal of the obligations, the negotiators proceeded, in making offers in satisfaction of the claims, on a basis of a division of the claims into the amounts of principal and interest. The uses of the excess cash are limited to compromise settlements of unpaid interest owing on such of the claims as would receive cash under the plan, except in the cases of the five underlying mortgages and the River and Gulf mort-

gage of the Missouri Pacific. In those instances the court has ordered, as already described, that payments be made of principal as well as unpaid interest. Also, where an offer is made of a different class of new securities in satisfaction of a claim for principal than is offered for interest, the offer of the various classes of new securities is related to principal or interest respectively of the claims. For example, new first-mortgage bonds might be considered as offered in satisfaction of the principal of some claim and new general-mortgage bonds in satisfaction of the unpaid interest. This procedure proved useful in facilitating the negotiations.

In order to keep the total capitalization of the reorganized company provided for in the compromise plan the same as that approved in the Commission plan, despite the greater total amount of the claims as of the later effective date of the compromise plan, while still recognizing legal and equitable requirements in respect of satisfaction of claims, the compromise plan provides for options, exercisable by holders of some classes of old securities to which the surplus cash is applied, whereby such claimants may elect to take either new securities in amounts and of a class or classes considered by the proponents as meeting legal requirements for satisfaction of such claims, or, in lieu thereof to take, as to the amounts of such claims representing unpaid interest, specified amounts of the surplus cash by way of compromise settlements. By this device, and assuming that all creditors to whom such options are offered, elect to take the cash, a total of about $86,300,000 of claims for interest on obligations of senior creditors would be compromised by the payment of about $29,000,000 in cash, the

ratios of the amounts of cash offered to the amounts of claims compromised varying depending upon various factors, including the amounts of excess cash available in the respective group treasuries, the extent to which the properties covered by the mortgages held by the creditors participated in the earnings resulting in the cash accumulations, and partly as a result of trading among the negotiators of the plan.

These compromise offers of cash to holders of senior claims are calculated to spread the sacrifice of a part of the unpaid interest on their claims, in the event that they elect to accept cash instead of new securities in satisfaction of such portions of their interest, equitably among all creditors to whom the compromise cash offers are extended and the proponents of the plan contend that any substantial change in the terms of the offers would constitute such an alteration of the plan as to release them from their agreement to accept it.

This use of the surplus cash results in a greater share of the new securities than in the Commission plan being made available within the same total capitalization to apply towards satisfaction of junior claims while the proponents of the compromise plan contend that, at the same time, the treatment of senior creditors is also improved. The benefit to the junior creditors is particularly evident in the case of the large issue of unsecured convertible bonds, an end which the proponents of the compromise plan urge is greatly to be desired in view of the rejection of the Commission plan by this class and four other classes of such junior creditors.

The proponents of the plan represent that the junior creditors' sacrifice in the interest of reaching

a compromise agreement consists in their relinquishment of any claim to the part, amounting to about $18,000,000, of a total of nearly $41,000,000 of surplus cash on hand as of December 31, 1942, which part might have been used for payment of dividends during the period January 1, 1940, the effective date of the Commission plan, to January 1, 1943, the effective date of the compromise plan, on the new common stock provided for in the Commission plan and issuable to such junior creditors under the terms of that plan if it had gone into effect as of the former date. The amount of about $41,000,000 available for dividends on all of such stock was arrived at by deducting from the total amount of over $54,000,000 of excess cash, determined to have been on hand as of January 1, 1943, an amount of about $13,500,000 which would have been paid out in interest charges and preferred dividends during the period January 1, 1940 to January 1, 1943 after crediting amounts ordered by the court to be paid during the period as interim interest payments on the old securities.

In the event that any of the creditors to whom the compromise cash offers are tendered should elect to take the new securities in lieu of the cash in satisfaction of the parts of their total claims affected by the compromise cash offers, the total capitalization of the reorganized company would still be kept to the same amount by a provision in the plan that the excess cash so released shall be used by the reorganization managers to purchase in the open market or at private sale new securities issuable under the plan at prices insuring the acquisition of an amount of the securities sufficient to maintain the same capitalization. The new securities to be purchased will be

new general-mortgage bonds, to be purchased with the cash released in respect of creditors entitled to receive and electing to take such bonds in lieu of cash, and common stock, to be purchased with the cash released in respect of creditors entitled to receive and electing to take stock. The maximum price at which the bonds would have to be purchased is 62 and the maximum price for the stock 26.

The proponents of the plan express confidence that sufficient stock will be available at the above price. As to the general-mortgage bonds, an agreement has been secured by the proponents of the plan from certain of the parties to this proceeding who will be entitled to receive such bonds under the terms of the plan, to sell to the reorganization managers, if necessary, a sufficient amount of the bonds at the maximum price. In fact, the plan's proponents believe that the new securities may be purchaseable at such lower prices than the above maxima as to result in a decrease in the permissible capitalization of the reorganized company below that determined in the Commission plan, since any surplus cash over that required to purchase the amount of securities necessary to keep the capitalization within the prescribed limit, must be used to retire other debt of the reorganized company through payment into the sinking funds for first-mortgage bonds and/or for general-mortgage bonds as the board of directors of the reorganized company shall determine.

We shall hereinafter discuss the allocations of the new securities proposed in the compromise plan and the optional cash offers in part settlement of interest on some of the claims. We shall defer until then a description of the methods and formulas used by the

framers of the plan during their negotiations in arriving at their results. The compromises agreed upon appear to be largely a matter of trading between the various interests, with an effort to follow, so far as possible, the relative treatment afforded the different claimants in the Commission plan. The allocations provided in the compromise plan of cash and new securities to the various claims as a whole are set forth in detail in appendix A attached hereto on the basis that all optional cash offers are exercised. The amounts of the new securities and cash for each $1,000, principal amount of claim or for each $100 par value of stock, including the additional optional offers of securities and of cash, are stated in appendix B also attached hereto. The computation of outstanding claims as shown in appendix A and in our subsequent discussions gives effect to a payment as of some time prior to January 1, 1944, pursuant to the court orders hereinbefore referred to, of the principal and interest on the five underlying Missouri Pacific mortgages and 30 percent of the principal of the River and Gulf bonds, together with interest on such 30 percent of the principal.

The allocations provided in the Commission plan of cash and new securities to the various claims as a whole are set forth in detail in appendix C attached hereto and the distribution of cash and new securities for each $1,000 bond and all unpaid interest thereon to January 1, 1940, is shown in appendix D.

Capitalization and annual charges of the compromise plan compared with the Commission plan.—The following tables show the capitalization and annual charges under the compromise plan compared with the Commission plan:

CAPITALIZATION

	Compromise Plan		Commission Plan		
Fixed-interest debt					
Equip. obligs., undisturbed		$ 15,715,000		(Note D)	$ 15,715,000
Plaza-Ol. Bldg. 1st-mtg. bds.		591,000			591,000
10-yr. collat. tr. sec. 3½% notes		10,253,000			14,433,500
First-mtg. bonds (Note A)					
Series A					
15-yr. 3½%	21,472,000		25-yr. 3½%...	$ 21,779,500	
Series B 25-yr. 3½%)			50-yr. 4%.....	126,921,000	
Series C					
50-yr. 4% (Note B)	135,297,000			(Note B)	138,700,500
Total 1st mtge.		156,769,000			
Total Fixed-int. Debt		183,507,000			189,499,000
Contingent-interest debt					
General-mtg. bds.					
Series A					
65-yr. cum. 4½%...	120,676,000		4%-65 yr.	23,727,500	
Series B					
75-yr. 5%	38,499,000		4½%-75 yr. ...	97,934,000	
Total Cont.-int. debt		159,175,000			120,661,500
Total debt		252,682,000			210,141,000
Stock					
Pref. stk. ser. A 5%,			(Prior pfd)		
par value $100	57,717,000		5%-$100 par...	29,189,500	
Comm. stk., class A			(2nd pfd)		
(Note C)	91,184,000		$5 int. (Note C)	76,211,500	
Comm. stk., class B			(Common)		
(Note C)	58,897,000		no-par (Note C)	126,766,400	
Total stock		207,798,000			253,267,400
Grand total		580,480,000			543,398,400

Common stock purchase warrants for 1,224,411 additional shs. of class B comm. stk.

Note A: As provided in the compromise plan, the claims of the Finance Corporation, the Railroad Credit Corporation and the bank debt are respectively allocated certain amounts of first-mortgage bonds, series A, with the option to each to accept in lieu thereof first-mortgage bonds, series B. Likewise, the holders of River and Gulf bonds are allocated a certain amount of first-mortgage bonds, series C, with the option to accept in lieu thereof either first-mortgage bonds, series A, or series B, whichever of the said series is not elected by the Finance Corporation. In the case of the acceptance of any of these options, the total amount of each of the several series of first-mortgage bonds to be issued in the reorganization will be adjusted accordingly, so that the aggregate amount of the first-mortgage bonds to be so issued shall be limited to approximately the amounts shown in the above table.

Note B: Does not include additional first-mortgage bonds to be pledged under the terms of both plans to secure new collateral-trust 10-year notes. Under the terms of the compromise plan these will be $12,940,000 of first-mortgage bonds, series C, and under the terms of the Commission plan $15,876,850 of first-mortgage bonds, series B.

Note C: No par value. Value stated at $100 per share. The amount of new common stock above stated does not include any stock to be issued to the holders of general unsecured claims.

Note D: The amounts shown in the Commission plan capitalization for equipment obligations and Plaza-Olive Building bonds have been stated to conform to the amounts shown in the compromise plan since, as of January 1, 1943, the same amounts would be outstanding under both plans.

ANNUAL CHARGES

	Compromise Plan		Commission Plan	
Fixed interest				
Equip. obligations	$ 294,849		$ 294,849 (Note H)	
Plaza-Ol. Bldg. bds. (3%)	17,745		17,745 (" ")	
Col.-tr. notes (3½%—Note E)	862,334		906,173 (Note E)	
First-mtg. bds. (Note F)				
Series A (3½%)	1,101,512		1,101,731 (3½%)	
Series C (4%)	5,413,491		5,070,849 ("B"-4%)	
Fixed charges		$ 7,219,735		$ 7,191,127
Contingent charges				
Capital expend. fund	(Note G)		580,000 (Note I)	
1st-mtg. sink. fund (½%)	417,023		None	
Plaza-Ol. Bldg. bds. (3%)	11,830		11,830 (Note H)	
General-mortgage bonds				
Series A (int. 4½%)	5,430,425		909,060 (4%)	
Ser. A bds. sink. fund (½%)	602,382		112,635 (½%)	
Ser. B (int. 5%)	1,924,937		4,407,080 (4½%)	
Ser. B bds. sink. fund (½%)	192,494		489,670 (½%)	
Contingent charges		8,580,101		6,511,245
Total fixed and conting. charges		15,299,836		13,697,382
Prof. stk., ser. A, dividends (5%)		3,455,841		5,775,050 (prior (pfd. & (2nd (pfd.)
Total annual charges		18,755,677		19,472,432

Note E: Interest rate subject to change as provided in both plans.

Note F: The amount of first-mortgage bond interest under the terms of the compromise plan is subject to the contingencies mentioned in Note A under the foregoing table showing the capitalization of the reorganized company.

Note G: It is estimated that the average annual charge to operating expenses for depreciation on road property will approximate $2,900,000. This is the equivalent of a capital expenditures fund of 2½% on consolidated total railway operating revenues of $116,000,000. Consequently no charge is included in the table above in respect of the compromise plan.

Note H: Interest on equipment obligations and Plaza-Olive Bldg. bonds, as shown for Commission plan, are so stated as to conform to amounts shown for the compromise plan.

Note I: Commission plan provides for a capital expenditures fund equal to 2 percent of total railway operating revenues. The amount stated is, however, only one-half of one percent on $116,000,000 operating revenues in order to make the statements for the two plans comparable, since, under both plans charges to operating expenses for depreciation on road property is to be credited to the capital expenditures fund and, as stated in Note G, it is estimated that such charges will average about 2½ percent on railway operating revenues of $116,000,000.

The total capitalization of the Commission plan, as stated above, exceeds by about $2,000,000 the permissible capitalization authorized by, and as stated in that plan. This is because of the inclusion in the above statement, for purpose of comparison, of the greater amount of equipment obligations outstanding as of January 1, 1943, the effective date of the compromise plan, than as of January 1, 1940, the effective date of the Commission plan. These equipment obligations are to be assumed by the reorganized company under the terms of both plans.

The above statement of capitalization under the compromise plan is subject to the possibility that, as provided in that plan, in the discretion of the reorganization managers with the approval of the court, the properties of the International, and of the Austin Dam & Suburban Railway Company may be transferred to the International or to a separate new company instead of to the reorganized (Missouri Pacific) company; and that the properties of the Natchez & Southern Railway Company and Natchez & Louisiana Railway Transfer Company may be transferred to a separate new company instead of to the reorganized (Missouri Pacific) company; in either of which events the capitalization of the reorganized (Missouri Pacific) company as shown in the above table would be reduced by the amount of equipment obligations assumed by the separately incorporated International (or separate new company) and by the separate new company to which would be transferred the properties of the Natchez & Southern Railway Company and Natchez & Louisiana Railway Transfer Company. All of the bonds and stock of the separately incorporated Inter-

national (or separate new company) and of the separate new Natchez company would be transferred to the reorganized (Missouri Pacific) company and pledged under its new first mortgage and general mortgage. The securities of the separately incorporated International (or separate new company), other than equipment obligations which are to be assumed, would be limited to approximately $23,415,000, principal amount, of first-mortgage bonds bearing contingent interest at the rate of 5 percent per annum, dated as of the effective date of the plan and maturing 75 years after their date, and such amount (not exceeding approximately $26,585,000) of new common stock with or without par value as the reorganization managers may determine. The securities of the separate new Natchez company would consist of equipment obligations, which are to be assumed, and approximately 5,000 shares of new common stock with or without par value as the reorganization managers may determine. The reasons for the possible incorporation of these separate companies will be discussed hereinafter.

The most important differences in the capital structures of the two plans are (1) a decrease in the compromise plan as compared with the Commission plan of about $4,000,000, in the principal amount of fixed-interest 10-year collateral-trust notes and an increase of about $8,000,000 in the principal amount of the junior issue of fixed-interest first-mortgage bonds, with a resulting net increase in the compromise plan of about $4,000,00 in total fixed-interest debt, and (2) an increase in the compromise plan of about $38,500,000, principal amount, of contingent-inter-

est general-mortgage bonds and a decrease of about $44,500,000 in the total amount of stock to be outstanding, the compromise plan providing for about $57,800,000 less of preferred and about $13,300,000 more of common stock than the Commission plan.

The collateral-trust notes of the Commission plan would be distributed in satisfaction of the five underlying Missouri Pacific mortgages now paid or to be paid in cash pursuant to the court orders hereinbefore referred to, while the smaller amount of collateral-trust notes provided in the compromise plan would be allocated in payment of 30 percent of the principal amount of River & Gulf bonds outstanding after payment of another 30 percent thereof in cash pursuant to one of the court orders which have been hereinbefore referred to.

The increase in the amount of first-mortgage fixed-interest bonds under the terms of the compromise plan over the amount provided for in the Commission plan is the result of a transformation of about 30 percent of the issue of series-A general-mortgage income bonds provided for in the Commission plan into first-mortgage fixed-interest bonds, thereby and to that extent increasing the amount of the latter bonds, which otherwise would be outstanding.

The series-A general-mortgage contingent-interest bonds of the compromise plan may be considered as corresponding in priority to the total of the remainder of the series-A and all of the series-B general-mortgage contingent-interest bonds of the Commission plan, while the series-B general-mortgage bonds of the compromise plan are of approximately the same

amount and may be said to correspond in some degree to the prior preferred stock of the Commission plan.

The compromise plan also provides additionally for the issuance of common stock purchase warrants not provided for by the Commission plan.

Description of the new debt securities.—The new first mortgage of the compromise plan differs in certain respects from that of the Commission plan. Three series of bonds, A, B, and C instead of two as in the Commission plan are issuable in the reorganization and are limited to the amount necessary to carry out the terms of the plan, but, as in the Commission plan, additional bonds of other series may be issued from time to time without limit as to aggregate amount, subject to such limitations and restrictions as may be specified in the first mortgage.

The series-A bonds would mature in 15 years, bear 3½ percent interest payable semi-annually, and be redeemable as a whole or in part on any interest-payment date on 30 days' notice, and at any other time on 60 days' notice, at 101 percent, of their face value during the first 3 years, 100¾ percent during the next succeeding 3 years, 100½ during the next 3 years, 100¼ during the next 3 years, and at 100 percent thereafter until maturity, together with accrued interest. They would be redeemable for the sinking fund, described hereinafter, at their principal amount plus accrued interest.

The series-B bonds would mature in 25 years, bear 3¾ percent interest payable semi-annually, and be redeemable as a whole or in part on any interest-payment date on 30 days' notice and at any other time

on 60 days' notice, at 102½ percent of their face value during the first 3 years, 102¼ during the next succeeding 3 years, 102 during the next 3 years, then decreasing progressively by ¼ percent for each of the next seven 2-year periods and thereafter at 100 until maturity, together with accrued interest. They would be redeemable for the sinking fund at their principal amount plus accrued interest.

The series-C bonds would mature in 50 years, bear 4 percent interest payable semi-annually, and be redeemable as a whole or in part on any interest-payment date on 30 days' notice and at any other time on 60 days' notice, at 106 percent of their face value during the first 4 years, then decreasing progressively by ½ percent for each of the next ten 4-year periods, then at 100½ during the next succeeding 3 years, and thereafter at 100 to maturity, together with accrued interest. They would be redeemable for the sinking fund at their principal amount plus accrued interest.

The Commission plan has no provision for a regular sinking fund to retire the first-mortgage bonds issuable in the reorganization while the compromise plan provides for annual payment equal to one-quarter of 1 percent of the aggregate amount of series A, B and C bonds authenticated pursuant to the plan exclusive of bonds pledged to secure the collateral-trust notes. Payments are to be made on April 1 of each year out of available net income of the preceding year commencing with the second April 1 following the effective date of the plan and are cumulative so that, if not earned in any year, the deficiency shall be made up in the next succeeding year or years. The sinking fund is to be applied to the retirement of the follow-

ing new securities in the order stated, by purchase in the open market or by call for tenders at not exceeding their principal amount plus accrued interest; (1) collateral-trust 10-year notes, (2) first-mortgage bonds, series-A, (3) first-mortgage bonds series-B and (4) first-mortgage bonds, series C. If, on November 1 of any year, the unexpended balance in the sinking fund exceeds $50,000, the funds shall be applied on the next succeeding interest-payment date to the redemption of the above new securities in the above order. All notes and bonds acquired by application of the sinking fund are to be canceled and no bonds shall be issued to refund them.

The compromise plan contains substantially the same restrictions upon the issue of additional first-mortgage bonds as the Commission plan except that it provides that emergency bonds may be issued and sold or pledged without regard to any of the restrictions contained in the plan with respect to the issue of first-mortgage bonds for other purposes, upon resolution adopted by the vote of two-thirds of the board of directors that funds are needed and cannot otherwise be raised, provided that (1) the emergency bonds shall constitute a revolving fund and the reorganized company shall agree to retire and restore to the treasury all emergency bonds as soon as practicable; (2) all of the emergency bonds shall be redeemable and if any emergency bonds are not retired within 2 years from the date of issue, there shall be an annual sinking fund therefor equal to 10 percent of the amount thereof, payable out of available net income of the reorganized company as hereinafter described, and (3) the amount of emergency bonds, including those

pledged or held in the treasury of the reorganized company, shall not exceed at any one time $15,000,000 or 2 years' fixed charges, whichever sum shall be the greater.

The compromise plan differs from the Commission plan in that the former specifically provides that, subject to the foregoing provisions with respect to emergency bonds, any additional sinking fund or funds which may be created by the board of directors for the retirement of first-mortgage bonds other than series A, B and C may be subordinated to or rank equally and ratably with, but not prior to the sinking fund for the series A, B and C bonds and that the total amount of all annual installments payable in respect of such additional sinking fund or funds shall not exceed one-half of 1 percent of the greatest principal amount of first-mortgage bonds, other than series A, B and C, theretofore at any one time outstanding.

The compromise plan also contains a new restriction upon the issuance of additional first-mortgage bonds to the effect that the first mortgage shall contain a covenant that no bonds, other than those to be authenticated under the plan and emergency bonds, will be authenticated and delivered unless (a) the reorganized company shall have contracted forthwith to sell or pledge such bonds and (b) the board of directors of the reorganized company shall by resolution adopted by two-thirds of the entire number of directors, have determined that, in the opinion of the board, taking into account market and other relevant conditions at the time, it is undesirable or impracticable to provide the amount of money needed (1) by the

sale of general-mortgage bonds having a suitable maturity at a price which would give a yield to maturity of 5 percent or less, or (2) by the sale of preferred stock at a price which would give a current dividend return of 6 percent or less or (3) by the sale of common stock of either class at a price which would give a current dividend return of 6 percent or less based on the regular dividend rate then in effect, or, if there is none, then on the average rate at which dividends have been paid during the past 12 calendar months.

The compromise plan contains certain specific provisions not included in the Commission plan as to modification of the first mortgage. These provisions are (a) that, with our approval, the obligation of the reorganized company to pay the principal of, or interest on, any bond at the time and place and at the rate and in the currency provided therein, (an obligation which under the Commission plan can only be waived by consent of the holder of the bond) may be modified by the concurrent action of the reorganized company and of the holders of not less than three-fourths in aggregate principal amount of bonds affected by such change then outstanding, so as to postpone the time of payment of all or any part of such principal and/or interest, and (b) that no change or modification of the mortgage shall permit the creation by the reorganized company of any mortgage or lien in the nature of a mortgage ranking prior to, or on a parity with the lien of the first mortgage, except as in that mortgage otherwise expressly provided. There is also a provision included in the compromise plan that any modification or alteration of the first

mortgage authorized to be made as above provided, may specifically include procedural provision for ascertaining available net income without the maintenance of separate books of account in the event the reorganized company shall be merged into or consolidated or unified with another corporation, whether or not a subsidiary of the reorganized company.

The compromise plan also contains a new provision that the first mortgage shall contain a covenant that the reorganized company will at all times keep the mortgaged property supplied with such amount of motive power, rolling stock and equipment (on which the first mortgage shall constitute a paramount lien subject only to such liens in the nature of purchase money liens as may be permitted by the terms of the compromise plan) and maintain the same in such condition as may be necessary for the efficient and economical operation of the mortgaged property.

The provisions of the compromise plan with respect to the collateral-trust 10-year 3½-percent notes are the same as in the Commission plan except that it is provided in the compromise plan that they shall be redeemable without premium, and be secured by 125 percent of first-mortgage bonds, series C, compared with the 110 percent of series-B first-mortgage bonds provided for in the Commission plan, which also provides for redemption with premium. There is an additional express provision in the compromise plan that all series-C first-mortgage bonds released from the lien of the note indenture shall be canceled. There is a provision that the reorganization managers will use their best efforts to arrange for the underwriting of the notes prior to consummation of the plan. If

the underwriting is arranged, each person entitled to receive notes may take either the notes or cash at not less than par plus accrued interest to a date fixed by the reorganization managers. The arrangement is to be subject to the court's approval.

The provisions of both plans as to the Plaza-Olive Building mortgage are identical.

The general mortgages of both plans would be liens upon all of the properties and assets of the reorganized company that are subject to the new first mortgage, subject, however, to the first mortgage. The general-mortgage bonds of the compromise plan would be issuable in series, the total authorized issue to be unlimited in principal amount. The series-A bonds differ from those issuable under the Commission plan in that the contingent-interest rate is 4½ percent instead of 4 percent per annum, the interest to be cumulative up to a maximum accumulation of 13½ percent compared with 20 percent as provided in the Commission plan. A new provision of the compromise plan is that interest owing as a debt in a given year but which is paid on the interest-payment date in the next succeeding year shall not be included in calculating the maximum limit of accumulation.

Series-B bonds of the compromise plan differ from those of the Commission plan in that they would bear contingent interest at the rate of 5 percent per annum instead of 4½ percent. The notice required for redemption would be 30 days if redeemed on an interest-payment date instead of 60 days as provided in the Commission plan and otherwise 60 days as compared with 90. The series-B bonds would not be convertible while in the Commission plan it is provided that the

principal of each $1,000 series-B bond may be converted into seven shares of second-preferred stock and $500, principal amount, of general-mortgage bonds, series A, with appropriate provisions for adjustment of interest and dividends and for adjustment in case of an increase or reduction in the authorized amount of second-preferred stock or other contingencies.

The Commission plan provides for one sinking fund for both series A and B general-mortgage bonds, the annual payments into the fund to equal one-half of 1 percent of the maximum principal amount of bonds outstanding and the moneys in the fund to be used first in the retirement by purchase of series-A and then series-B bonds, the bonds so acquired to be kept alive and the interest paid on them credited to the sinking-fund payments, until the happening of certain contingencies as stated in the Commission plan. The compromise plan provides for separate sinking funds for each of series A and B bonds, the annual payments to be one-half of 1 percent on the series-A bonds and not to exceed that amount on the series-B bonds with the payments into the series-A sinking fund given priority. All bonds acquired through operation of both sinking funds are to be canceled under the terms of the compromise plan.

The compromise plan provides that general-mortgage bonds of other series than A and B, bearing contingent interest, may be issued but only for the following purposes: (1) To refund general-mortgage bonds or mortgage obligations which may at the time be a lien on any part of the system prior to the lien of the general mortgage and (2) for the purposes and subject to the restrictions contained in the plan in re-

spect of the issue of additional first-mortgage bonds, to the extent that first-mortgage bonds are not issued for such purposes; *provided, however,* that no emergency bonds may be issued under the general mortgage.

The compromise and Commission plans contain substantially identical provisions for future changes or amendment of the terms of the general mortgage, the compromise plan, however, expressly providing that no such change or amendment shall permit the creation by the reorganized company of any mortgage or lien in the nature of a mortgage ranking prior to or on a parity with the lien of the new general mortgage except as in that mortage otherwise expressly provided.

Under the compromise plan, the new general mortgage would contain provisions that, if the International and the Austin Dam & Suburban Railway Company should be incorporated separately from the reorganized Missouri Pacific Company, the new first mortgage of the separately incorporated International Company should be in an amount and contain certain provisions which are specified.

The compromise plan provides that both the first mortgage and general mortgage shall contain such provisions as the reorganization managers may approve either (1) permitting the reorganized company, while it is not in default in the performance of its obligations under said mortgages respectively and during any period of grace therein specified, to use and dispose of, to the same extent as if not subject to the lien of such mortgages respectively, cash, temporary

cash investments, tools, supplies and other current items or (2) excluding such property from the liens of said mortgages.

Available net income and capital expenditures fund.—The compromise plan provides that available net income shall be determined for each calendar year beginning with the year in which the effective date falls. It shall be determined by deducting all fixed charges of the reorganized company and its wholly owned railway subsidiaries accruing during the calendar year from the consolidated income of the reorganized company and such subsidiaries available for fixed charges for such year, provided, however, that available net income for any period after the effective date and prior to the consummation of the plan shall be computed as if the plan had been consummated on the effective date. If, in any calendar year available net income should be a deficit, the amount of such deficit would be carried forward and be deducted in determining available net income for the succeeding calendar year or years until such deficit (or accumulated or remaining deficits) be extinguished by earnings which, in the absence of such deficit or deficits, would be available net income, and (2) any adjustment necessary to correct the income accounts of any prior years shall be made by appropriate entries which may either be made in the accounts of the current year and/or, in the discretion of the board of directors and subject to our approval or such other governmental agency as may at the time have jurisdiction, may be made in whole or in part in the accounts of any subsequent year or years, and any such debits or credits to adjust income in prior years shall

be treated as income items for the year in which entered on the books whether cleared through income or profit and loss accounts.

Available net income for each calendar year would be applied to the following purposes and in the following order:

(1) **Capital expenditures fund.**—The terms of the compromise plan with respect to the capital fund are substantially the same as contained in the Commission plan except (a) the amount of the annual payment into the fund under the compromise plan is to be equal, before the credits stated in the plan, to 2½ percent (instead of 3 percent as in the Commission plan) of the consolidated total railway operating revenues of the reorganized company and its wholly owned railway subsidiaries for such calendar year; and (b) a proviso, similar to one approved by us in other reorganization plans, is added to the prohibition against issuing any evidences of indebtedness to capitalize, or reimburse the reorganized company for, expenditures of moneys from the capital expenditures fund, to the effect that, if such expenditures are for purposes for which first-mortgage or general-mortgage bonds may be issued, the expenditures may, within such limits, if any, as may be specified in the mortgages, be used to supply in whole or in part the excess of capital expenditures required to be certified under either mortgage over the principal amount of the bonds that may be issued under the terms thereof.

(2) **First mortgage sinking fund.**—Any then remaining available net income would, to the extent required, be applied on the next succeeding sinking-fund payment date to sinking-fund installments on

first-mortgage bonds, such payments, if any, in respect of emergency bonds to receive priority. Sinking funds for series of bonds other than A, B, and C may be subordinated as hereinbefore stated, including a special sinking fund set up in respect of bonds issued in respect of equipment.

(3) **General-mortgage series-A interest.**—Any then remaining available net income would be applied to payment of interest on general-mortgage bonds, series A, and any accumulations thereof unless such payment would be less than one-quarter of 1 percent, any excess not paid to be reserved and added to income available for such interest for the next succeeding year.

(4) **General-mortgage series-A sinking fund.**—Any then remaining available net income would, to the extent required, be applied to the sinking fund installment on general-mortgage bonds, series A.

(5) **Interest on other general-mortgage bonds.**—Any then remaining available net income would be applied to payment of interest on general-mortgage bonds of any series other than series A, without preference. The other provisions stated in paragraph (3) above apply.

(6) **General-mortgage sinking fund.**—Any then remaining available net income would, to the extent required, be applied to the sinking-fund installment or installments on general-mortgage bonds other than series A, without preference unless, at the time of creation of any series other than A and B, the sinking fund for such series is subordinated.

(7) **Preferred stock dividends.**—Any then available net income would be applied to the payment of dividends, when and as declared, on the preferred stock and any accumulations thereof, in accordance with the applicable provisions of the certificate of incorporation of the reorganized company and the resolutions establishing one or more series of preferred stock.

(8) **Common stock dividends, retirement fund and other corporate purposes.**—Any then available net income remaining may be applied to any proper corporate purpose, including dividends on the classes of common stock in their order of priority and to the retirement fund, which will be later described, for retirement of general-mortgage bonds and preferred stock, series A.

Description of the new stock issues.—The compromise plan provides for only one issue originally of preferred stock, designated series A, of an amount sufficient to carry out the terms of the plan. The stock would be of $100 par value and entitle the holders to dividends at the rate of 5 percent per annum, when and as declared by the board of directors, out of available net income for any calendar year in preference to holders of the common stock. Dividends would be cumulative in respect of each calendar year but only to the extent that there is available net income for such year distributable under the plan as such dividends. No dividend could be paid on the common stock in any calendar year unless all accumulated unpaid dividends and the year's current dividend on the series-A preferred stock has been paid or declared and set apart for payment.

In the event of the dissolution, winding up or liquidation of the reorganized company, the holders of series-A preferred stock would be entitled to receive out of the assets of the company $100 per share, together with an amount equal to all accrued, unpaid and accumulated dividends, before any distribution to holders of common stock. The series-A preferred stock would be redeemable in whole or in part at any time on 60 days' notice at par plus a 5 percent dividend, whether or not earned, from the preceding January 1 to the redemption date less any dividends paid during that period, plus all accumulated dividends for preceding year. Holders of the preferred stock series A would have no preemptive subscription privileges for any shares of stock of any class or to securities convertible into stock of any class. Each share of stock would entitle the holder to one vote.

The plan provides that the reorganized company's certificate of incorporation shall contain provisions that the company shall not, without a two-thirds in par value vote of the series-A preferred stockholders (a) amend the certificate of incorporation or any amendatory or supplemental one so as to alter or change the preferences and voting rights to which the series-A preferred stockholders are entitled under the plan, (b) create any additional stock ranking either as to assets or dividends in priority to, or on a parity with the new preferred stock and (c) issue any of the shares of preferred stock, which are to be originally authorized, for any purpose other than to carry out the plan or for purposes for which new first-mortgage bonds or new general-mortgage bonds might otherwise be issued.

Subject to the foregoing provisions, the certificate of incorporation would permit the authorization and issuance of additional preferred stock of such series and amounts, with such par value and entitled to such dividends, voting rights, priority, redemption, conversion and other special privileges and restrictions as the board of directors in its discretion determines.

The reorganized company's new common stock would be divided into two classes, class A and class B, both without par value, the number of shares authorized to be in relation to the requirements of the plan and originally to be in the amounts necessary to carry out the plan. Promptly after organization of the reorganized company, the board of directors would adopt resolutions (1) reserving the number of shares of authorized but unissued common stock, class B, necessary for issuance against the exercise of warrants as hereinafter described, (2) authorizing the issuance from time to time as warrants are exercised of all or any part of said reserved shares of class-B common stock against payment therefor at the price of $100 per share, and (3) providing that said resolutions, which shall be deemed to constitute a contract with the holders of the warrants, shall not be subject to revocation during the period when the warrants may be exercised.

The certificate of incorporation would permit the authorization from time to time of additional shares of common stock of either class with the consent of the holders of not less than a majority of the number of shares of common stock of each class at the time outstanding and would permit the board of directors

in its discretion to authorize the issuance of such additional shares of common stock for any lawful purpose.

In any calendar year no class-B dividends could be paid until after a $5 class-A dividend, then $5 shall be paid on the class-B stock and thereafter the two classes with participate equally.

In dissolution, winding up, or liquidation, class-A common stockholders would be entitled to $100 per share out of assets before distribution to class-B stockholders. Thereafter the latter would receive $100 a share and thereafter any further distributions on common stock would be made equally and ratably on all outstanding shares of common stock of both classes. Each share of common stock would be entitled to one vote.

Voting trust.—A voting trust is proposed to be established for the purpose, as stated in the plan, of assuring a stable, experienced and impartial management which will be free to act in the general interest without allegiance to any particular class of security holders during the crucial period which will follow consummation of the reorganization and the termination of the war. The voting trustee would be three in number, one to be an outstanding citizen of Missouri, one an outstanding citizen of Texas and the third to be chosen by the other two, all subject to the approval of the court. If any vacancy shall occur it would be filled by a majority of the remaining trustees.

All of the series-A preferred stock, and series A and B common stock issued in the reorganization and all other voting stock thereafter issued by the re-

organized company during the continuance of the voting trust, including additional shares of class-B common stock issued upon warrants, would be deposited in the voting trust and certificates issued therefor, the reference throughout this report to the reorganized company's stock being deemed to mean voting-trust certificates for the stock unless the context otherwise requires. The voting trust would continue (1) for 10 years from date of consummation of the plan or (2) until available net income shall have been sufficient, for a period of 3 consecutive calendar years, commencing not earlier than the January 1 nearest to the date of consummation of the plan, to provide full interest and sinking-fund requirements on all outstanding series A and B general-mortgage bonds plus the sum of $3,600,000 per year, whichever period shall be the shorter.

The above-described voting trust of the compromise plan differs from that provided by the Commission plan. In the latter plan the voting trust, which would be administered by five trustees instead of three as in the compromise plan, would be established for the protection of the holders of the new general-mortgage bonds issuable under the plan and would contain only the prior preferred and second-preferred stocks and not the common stock.

Warrants.—Unlike the Commission plan, the compromise plan provides for the issuance in the reorganization of warrants exercisable at any time within 10 years after date of consummation of the plan entitling the holders to purchase or subscribe for, at $100 per share, the aggregate number of shares of class-B common stock necessary to carry out the plan.

The exercise of the warrants would operate as a purchase of class-B common stock held in escrow (as hereinafter described) until all of the escrowed stock has been purchased and thereafter as a subscription to class-B common stock reserved for issuance against the exercise of warrants. The warrants would not entitle the holders to vote, to receive dividends, to any preemptive right to subscribe to stock of any class or to securities convertible into stock, or to any of the rights of stockholders.

Escrow of class-B common stock.—The compromise plan provides that all class-B common stock to which creditors are entitled under the plan be placed in escrow for a period of 10 years after consummation of the plan or until all stock warrants have been exercised, the creditors meanwhile receiving certificates of beneficial interest in lieu of their stock certificates. If, at the termination of the voting trust, any class-B common stock were still held in escrow, the holders of the certificates representing such stock thereafter would be entitled to have the stock registered in their names.

When warrants are exercised in respect of escrowed stock, the escrow agent would, from time to time, apply the purchase price to redemption at $100 per share of outstanding certificates of beneficial interest representing class-B common stock, provided, however, that, except upon termination of the escrow agreement, not less than aggregate amounts of $1,000,000 should be so applied unless requested by the reorganized company. The redeemed certificates would be determined by lot on the basis of units of one share of stock. Dividends received on escrowed stock would

be distributed by the escrow agent pro rata to the certificate holders. Upon termination of the escrow agreement any stock held by the escrow agent would be distributed pro rata among certificate holders after applying to the redemption of such certificates any cash then held by the escrow agent representing proceeds of the exercise of warrants. The subscription price to be received by the reorganized company upon the exercise of warrants affecting stock reserved for issuance against the exercise of warrants (as distinguished from escrowed stock to be issued in the reorganization to creditors) could be used by the reorganized company for any lawful corporate purposes.

Provision is to be made for adjustment of the price per share of class-B common stock at which warrants are exercised in the event of the issuance of additional such stock at a price less than the warrant price and also for adjustment of the number of shares purchasable by warrants in the event of the subdivision or combination of outstanding class-B common stock or the distribution of dividends payable in such stock. Provision is also to be made for the protection of the holders of warrants in the event of a consolidation or merger of the reorganized company with any other corporation, or the sale or conveyance of its property as an entirety, or substantially so, to any other corporation.

Retirement fund.—The compromise plan provides for a retirement fund, not included in the Commission plan, whereby the new first mortgage and general mortgage will contain provisions that whenever a dividend (other than stock dividend) is paid upon

common stock of either class, an amount equal to one-third of such dividend would be set aside as a sinking fund to purchase or redeem general-mortgage bonds, series A or B, issued pursuant to the plan. The retirement fund would continue to operate until all such general-mortgage bonds are retired.

Board of directors of the reorganized company.—The compromise plan provides for the same number of directors of the reorganized company as does the Commission plan and similarly provides that they be elected by the voting trustees as long as the voting trust is in effect and thereafter by the stockholders.

However, the panel of nominees from whom the members of the first board would be elected is different. The compromise plan provides that the panel be designated as follows: Five (5) by the first and refunding protective committee, of whom three (3) must be residents of the territory served by the Missouri Pacific; one (1) by the Finance Corporation; two (2) by the New Orleans first-mortgage and income bonds committee, of which one (1) must be a resident of the territory served by the New Orleans; two (2) by the International first-mortgage trustee of whom one (1) must be a resident of the territory served by the International; two (2) by the Missouri Pacific general-mortgage protective committee of whom one (1) must be a resident of the territory served by the Missouri Pacific; and two (2) by Alleghany Corporation of whom one (1) must be a resident of the territory served by the entire system.

If any nominee is unacceptable to the voting trustees, the trustees would promptly notify the nominating party who could designate another nominee

who would be acceptable to the voting trustees. Thirty days' notice of the date of the election of the first board of directors would be given the nominating parties by the voting trustees and if 5 days prior to such date any of the parties have failed to designate his nominee or nominees, the vacancy or vacancies could be filled by the voting trustees. The president of the reorganized company would be the fifteenth director.

Reorganization managers.—The composition of the five (5) reorganization managers as provided by the compromise plan would be different from that of the Commission plan, although under both plans they all would be approved by the court. The compromise plan provides that two (2) of the reorganization managers be designated by the first and refunding committee, one (1) jointly by the New Orleans first-mortgage and income bonds committee and by the International first-mortgage trustee; one (1) by the Finance Corporation; and one (1) jointly by the Missouri Pacific general-mortgage protective committee and by Alleghany Corporation.

Otherwise the provisions of the two plans in respect of the reorganization managers are substantially the same, although the compromise plan has an additional provision to the effect that the reorganization managers should have the power to construe the plan and any construction approved by them on advice of counsel would, subject to approval by the court, be conclusive.

Execution of the plan by sales; exclusion of certain lines.—The compromise and Commission plans both contain provisions, which are substantially the same,

declaring that the plans would not be inoperative and permitting their going into effect if the properties subject to certain mortgages are sold to others than the reorganization managers. These mortgages are The Central Branch Union Pacific Railway Company first mortgage, Little Rock & Hot Springs Western Railroad Company first mortgage, Cairo & Thebes Railroad Company first mortgage and the Boonville, St. Louis & Southern Railway Company first mortgage.

The compromise plan omits the properties of the International and the Austin Dam & Suburban Railway Company, separate sales of which to others than the reorganization managers are also permitted by the Commission plan.

FINDINGS AND CONCLUSIONS AS TO A PLAN OF REORGANIZATION.

This proceeding has been pending since March 1933. Its termination at the earliest practicable date by consummation of a fair and equitable plan of reorganization obviously is of the greatest importance to every one having an interest in the proceeding, including the general public. Widely divergent views have been expressed and urgently contended for by the creditors in connection with every plan which has been proposed. It seems amply proved that no plan can be drawn which will receive the unanimous approval of all claimants nor is it probable that any preliminary creditors' agreement even approaching unanimity can be reached. We therefore believe that the very substantial accord afforded the compromise

plan by representatives of holders of large amounts of securities of important classes entitle it to our careful consideration.

The primary purpose of the plan appears to be to improve the treatment of junior creditors as afforded them under the Commission plan, by inducing senior creditors to compromise a part of their claims for cash, thereby releasing a part of total capitalization to apply towards satisfaction of the junior claims. Those of the senior creditors refusing the cash compromises are given the option of taking additional new securities of such priorities and in such amounts as the supporters of the plan contend will fully satisfy their claims. The effectiveness of this provision is dependent upon new securities being available for acquisition by the reorganization managers at prices sufficiently low to maintain the permissible capitalization. The proponents of the plan contend that this is assured.

The question arises whether the plan should compel such an election by senior creditors in order for them to obtain participation in the distribution of the excess cash proposed to be used for compromise purposes. That this constitutes a sacrifice by the senior creditors does not seem to us self-evident, assuming that the plan provides full satisfaction of their claims by means of allocation of additional new securities in lieu of the compromise cash offers. The amount, if any, of the sacrifice would depend to a great extent upon the need or desire of an individual creditor as of the time of consummation of the plan for cash rather than an investment. Furthermore, all the new securities issued in the reorganization presumably

will be marketable. No specific objections to this feature of the plan providing for the use of excess cash in compromise offers have been urged by any of the parties. Some of the objectors to the plan would confine the use of the greater part of the excess cash to satisfaction in full of only certain of the senior claims, evidently upon the assumption that the cash can be applied towards settlement of claims of senior creditors as convenience or expediency dictate and that, when so applied, the general estate of the debtors and consequently of all of the creditors will benefit.

It is our opinion and we find that this feature of the plan providing for the optional compromise cash offers, does not constitute an impairment of the rights of the senior creditors and should not prevent our approval of the plan.

Amount of capitalization.—In our report of January 10, 1940, *supra*, in this proceeding, we determined the approximate total permissible capitalizations of each of the three groups of railroads comprising the Missouri Pacific system and of the system as a whole. These capitalizations are Missouri Pacific $463,000,000, New Orleans $67,000,000, International $50,000,000, and system $560,000,000. We pointed out that, while the system total is less by $20,000,000 than the aggregate of the individual group capitalizations, the system total was determined after elimination of duplications due to ownership by one debtor of obligations of another.

One of the parties to the proceedings contends that the duplications do not affect the value of the properties and that the permissible capitalization for the

system should equal the total of the separate capitalizations. If any one of the three operating groups of railroads were to be separately reorganized its ownership of valuable securities of one of the other two groups would be a recognizable asset, the value of the securities so owned being proper to add to the value which its other owned property otherwise would possess. Likewise, any income in the form of return on such securities of the other company so owned by the first group would increase the total income of the first group and its total permissible capitalization should be greater than if it did not own those securities. However, the total permissible capitalization of the second operating group of railroads whose securities were so owned would not be less by reason of any ownership of its securities by the first group. If, however, title to the entire owned properties of both groups were vested in a third new company, the securities of either of the former separate groups if transferred to the new company would represent no value to the new company additional to that which it would already possess by reason of the transfer to it of the titles to all of the other properties of the two groups. In the hands of the new company the securities of one of the former groups held by the other would be canceled. They would add nothing to the earnings of the third new company and would constitute no basis for permitting a higher capitalization of the new company than should be allowed if such securities had not been transferred to it.

Certain of the parties to this proceeding insist that the increased earnings of the Missouri Pacific system during the past few years and particularly since 1940,

coupled with the increases in the debtors' physical properties and the net increases in their current assets, warrant at this time a materially increased capitalization. It may be well, therefore, to restate briefly the principles which have governed us in fixing the capitalizations of railroads undergoing reorganization, and indicate how we apply these principles in the instant proceeding.

In the first instance, a capitalization determined by us for a reorganized railroad is in substance a finding of value for reorganization purposes. In this connection, it is of the utmost importance to distinguish between a valuation for reorganization and for rate-making purposes, since they are controlled by quite different principles. Our position in this respect is fully stated in *Chicago, G. W. R. Co. Reorganization*, 247 I. C. C. 193, 195, where it is said:

> The value of railroad properties which we endeavor to determine within maximum limits for financial reorganization purposes is value in the strict economic meaning of that word. Briefly it may be described as the actual worth of the properties to their owners, and basically it is dependent upon the present and prospective earning power of the properties, considering among other things, the amount of business available, the competition which must be met in obtaining that business, and the character and condition of the facilities which make up the physical properties.
>
> For the purposes of public regulation of rates and charges, the word value has come to be used under the decisions of the United States Supreme Court, in another sense, known variously as "fair value", "value for rate-making purposes", and sometimes as the "rate base". It is the amount upon which the owners of the property are enti-

tled, under the Constitution, to an opportunity to earn a reasonable return, an opportunity of which they cannot be deprived by public regulation if confiscation is to be avoided. This amount is determined after giving consideration and weight principally to the original cost of the properties, the cost of reproduction of the portion capable of reproduction, the present value of land, and the extent to which the properties have depreciated.

This latter so-called value may be obviously, and ordinarily will, differ from value in the strict economic meaning of the word. Because of sparsity of business available or the competition of other carriers, for example, it may not be possible to earn a reasonable return upon "value for rate-making purposes," even if public regulation allows the carrier a free hand in the making of its rates and charges. In that event the economic value will be the lower of the two. On the other hand it may be the higher, if the carrier is so strategically located that it can earn more than a minimum reasonable return upon "value for rate-making purposes" under public regulation, which must to some extent be based upon general transportation conditions.

Those criteria have governed us in fixing capitalizations of reorganized railroads and, in our opinion, are not only consistent with the statutory standards, but are also consistent with sound financial practices and the public interest. Our views in this respect have been sustained by many Federal district courts and by the Supreme Court of the United States. In the *Milwaukee* case, *supra*, Mr. Justice Douglas, after quoting the provisions of subsection (e) of section 77 of the Bankruptcy Act pertaining to the determination of value said:

> * * * It is argued that under this provision earning power is not the primary criterion of value and that the Commission did not give proper weight to the original cost, reproduction cost new, or the valuation for rate-making purposes. We disagree. We recently stated in *Consolidated Rock Products Co. v. DuBois, supra,* in connection with a reorganization of an industrial company that the criterion of earning capacity is the essential one if the enterprise is to be freed from the heavy hand of past errors, miscalculations or disaster, and if the allocation of securities among the various claimants is to be fair and equitable. * * *

Continuing the Court said:

> * * * A basic requirement of any reorganization is the determination of a capitalization which makes it possible not only to respect the priorities of the various classes of claimants but also to give the new company a reasonable prospect of survival. See Commissioner Eastman dissenting, *Chicago, Milwaukee & St. Paul Reorganization,* 131 I. C. C. 673, 705. Only "meticulous regard for earning capacity" (*Consolidated Rock Products Co. v. DuBois, supra,* p. 525) can afford the old security holders protection against a dilution of their priorities and can give the new company some safeguards against the scourge of overcapitalization. Disregard of that method of valuation can only bring, as stated by Judge Evans for the court below, "a harvest of barren regrets." * * *

The Court concluded:

> In this case the Commission followed the statute. While it made earning power the primary

criterion, it did not disregard the other valuations. It considered them and concluded in substance that they afforded no reasonable basis for believing that the probable earning power of the road was greater than what the Commission had found it to be by the use of other standards. The Commission need not do more.

A plan of reorganization must serve as a basis for the company's financial structure for the indefinite future and the capitalization which we approve should be such that the reorganized company will be able to meet its obligations and accomplish necessary financing during periods of business depression as well as of high earnings, and such that under all probable conditions it will be compatible with the public interest. Thus it must be based on consideration of earnings over a period long enough to reflect years of both high and low earnings.

The adoption of principles differing from those referred to above would mean that capitalization, in most cases, would have no relation to earning power. It would result in the issuance of reorganization securities having no real worth as investments. This in turn, apart from the dilution of the priorities of the old security holders, would defeat one of the most important objects of reorganization, namely, restoration of the credit of the reorganized company. If the amount of junior securities of a company is far in excess of its expectable earning power, additional securities of that character must be sold, if sold at all, at prices which are prohibitive taking into consideration the amount of cash which would have to be raised and the plant additions to be financed. Reorganizations should remove rather than perpetu-

ate the cause of bankruptcy, and should not be a means of misleading old and new investors. That desired effect can result only if the new securities are so related in character and total amount to the ability of the reorganized company to pay interest and dividends that such securities possess an actual value and not merely one that is speculative.

As stated in our report of January 10, 1940, in this proceeding, the statement by our Bureau of Valuation of certain elements of value as of December 31, 1935, of the properties of the Missouri Pacific system, excluding the Missouri-Illinois Railroad Company which will not be included in this reorganization and four small wholly owned companies not covered by the Bureau's report, shows the following totals: Original cost, except land, $569,413,195; cost of reproduction new $629,380,505; cost of reproduction less depreciation $433,772,838; value of land and rights $50,966,605; and working capital $8,478,200. If to cost of reproduction less depreciation there be added the value of land and rights and working capital, the total is $493,217,643 and if there also be added, as stated in the former report, the value as estimated by the debtors of the 4 small companies omitted by the Bureau, the total is $496,432,504.

This compares with a total value of the physical properties, as of December 31, 1934, as estimated by the debtors, of $585,432,224 and an estimate as of 1936 by a witness for the trustee under the International's adjustment mortgage of $500,412,617.

We further stated in the former report the book value as $60,150,487 of investments as of December 31, 1934, which would be owned by the new com-

pany in affiliated companies. There was also $1,643,187 of other investments and about $100,000 held in sinking funds and as deposits held by mortgage trustees in lieu of mortgaged property sold. If these amounts are added to the above total of $496,432,504, the resulting total will be $558,326,178, compared with the debtors' estimate of the total investment of the new company as of December 31, 1934 of $675,552,073.

In our former report we determined a permissible maximum system capitalization of about $560,000,000 as of January 1, 1940. Since that date, according to exhibits filed at the further hearing, there has been an increase in the system investment in road and equipment of nearly $26,000,000 and an increase in accrued depreciation of about $15,000,000, indicating a net increase in investment in road and equipment of about $11,000,000. The investment of the system in affiliated companies as stated by the debtors has, during the same period, increased by about $4,600,000. Adding these sums of $11,000,000 and $4,600,000 to the total given above of $558,326,178 produces $573,926,178. It does not necessarily follow, however, and the record does not show, that greater future earnings will result from this net increase in investment accounts.

The system's earnings available for payment of interest and dividends have shown large increases in the last few years. As reported by the debtors, they were $10,097,423 in 1939; $13,495,717 in 1940; $30,607,244 in 1941; $66,205,617 in 1942; but in 1943, the total of separate earnings of the three groups of the system decreased to $47,614,534.[5]

[5] The 1943 earnings are as reported in the court record which does not show the system earnings, which, however, are approximately the same as the total of the group earnings.

If the average annual system earnings available for payment of interest and dividends for the last 8 years, 1936-1943, inclusive, amounting to $25,656,332, are capitalized at 5 percent the result is $513,126,640 and at 4 percent $641,408,300.

A capitalization at 5 percent of the average annual earnings available for fixed charges of $21,837,675[6] for the 22-year period, 1921-1942, inclusive, produces $436,753,500 and at 4 percent, $545,941,875. The trustee's forecast of system earnings for a normal year is $22,059,052, which, if capitalized at 5 percent, produces $441,181,040 and at 4 percent $551,476,300. The trustee's earnings forecast for the system for a normal year is based on estimated total railway operating revenues of $129,140,357. These revenues are about the average of the total railway operating revenues of $113,083,970 realized by the system in 1940 and $144,049,600 in 1941.

Uncertainty must exist in any attempt to predict earnings for the indefinite future. The development of competitive means of transportation, the possibility of recurring droughts in the agricultural territory served, the effect of future tax legislation, the extent to which any possible inflation might directly affect the debtors' operating expenses and its effect upon business in general, the possibility of further increases in railroad wages, the possible reinstatement of rate increases granted under Ex Parte 148 and possible future rate increases, are all matters which make predictions of future earnings uncertain.

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[6] Includes income of Beaumont, Sour Lake & Western Ry. Co., International-Great Northern R. Co., Missouri Pacific R. Co., New Orleans, Texas & Mexico Ry. Co., St. Louis, Brownsville & Mexico Ry. Co., and San Antonio, Uvalde & Gulf R. Co., without the elimination of intercompany items and does not include income of the other minor operating companies which are included in the Missouri Pacific reorganization proceedings.

It is true that the record of the further hearing contains well reasoned testimony of eminent economists that, in their opinion, the level of railroad revenues in general and the Missouri Pacific's share of such revenues will be substantially greater for a considerable period after the termination of the war than prior thereto. The record also contains an imposing recital of many new industries which have been located on the debtors' lines. However, the testimony of the debtors' general freight traffic manager at the court hearing in July, 1943, shows how intimately most of the new developments are associated with the war effort. For example, of the 263 new industries established since January, 1940, directly on the lines of the Missouri Pacific, the witness described 27 as camp schools, air schools and air fields, 2 as miscellaneous government plants, 31 as war project plants, 9 as plants expanded by war work and 194 as commercial industries, the great majority of which were established to serve or augment war plants located on the line as, for instance, 11 storage yards for construction equipment, gravel pits and store yards, all of which ceased operating when construction of war plants was completed.

It is also reasonable to assume that other new industries on the debtors' lines, which might be convertible to other than war purposes, will, in a peacetime economy, be subject to the severest competition with similar new industries in other sections of the country, which also have been established or expanded during the war emergency.

The economists testifying at the further hearing emphasized the volume of traffic obtainable by the

debtors after the war. It does not necessarily follow that any increases in gross revenues, over the level existing immediately prior to the war, will produce corresponding increases in net railway operating income. By way of illustration, an analysis of Missouri Pacific Railroad Company and Missouri Pacific system earnings available for payment of interest for the years 1940 and 1941 recomputed in accordance with the method used by our Bureau of Transport Economics and Statistics in its Monthly Comment on Transportation Statistics issued on May 5, 1944, upon the basis of present rate and cost levels, produces interesting results. The changed conditions reflected are (1) a passenger fare increase of 10 percent, (2) straight-time wage rate increase of 31.7 percent, (3) payroll taxes increased by wage increase, (4) a weighted average increase in unit fuel costs of 45 percent, (5) an increase in material prices other than fuel of 19.74 percent and (6) depreciation accounting for roadway property instituted January 1, 1943.

The results shown are as follows:

The Missouri Pacific Railroad Company in 1940, instead of realizing $11,299,359 of income available for fixed charges before income taxes as reported by that debtor's trustee would have incurred a deficit before such fixed charges of $7,169,965. In 1941, the reported income available for fixed charges of $26,055,271 would have been reduced to $10,135,579.

Similarly, the Missouri Pacific system, instead of realizing $13,496,000 of income available for fixed charges before income taxes in 1940, as reported by the debtors' trustee would have incurred a deficit of

$10,596,000 and in 1941 the reported income of $81,807,000 available for fixed charges before income taxes would have been reduced to $10,893,000. Income taxes paid by the system in 1941 amounted to $1,000,000 while under the present normal and surtax rates, the tax (40 percent) on the recomputed smaller net income would have amounted to $1,441,306.

The system figures are estimated on a basis of certain percentages obtained from recomputations for the Missouri Pacific Railroad Company, since some of the smaller roads in the system do not make monthly reports and also because some of the figures in the reports of the individual class I railroads of the system are distorted by their system relations. The recomputations do not take into consideration any greater economy of operations which might be possible at present as compared with the years 1940 and 1941 but they are significant as indicating the higher cost of operations now prevailing. The system recomputation indicates that 1941 system operations would have yielded more than the fixed interest provided for in the plan as now modified, but much less than both fixed and contingent charges. These recomputations of income available for fixed charges for 1940 and 1941 are particularly significant in view of the fact that the system's average total railway operating revenues for those 2 years were about the same as such revenues for a normal year as estimated by the trustee of the debtors.

In the light of the foregoing facts and principles, and upon consideration of the entire record, including consideration of the current increased earnings, and the fact that the capitalization fixed reflects the

investments of the debtors in securities at their book value which doubtless exceeds their fair valuation, it is our opinion and we find that the capitalization of $560,000,000 for the Missouri Pacific system and the amounts above stated for each of the three groups comprising the system are the maxima which are warranted.

Capital structure.—We have hereinabove indicated the differences between the form of capital structure proposed by the compromise plan and that of the Commission plan. The decrease of about $4,000,000 in the former plan in the amount of 10-year collateral-trust notes to be outstanding, is more than offset by an increase of about $8,000,000 in fixed-interest first-mortgage bonds and, in a consideration of the amount of total indebtedness, by a further increase of about $38,500,000 in contingent-interest debt, due principally to the transference to general-mortgage bonds of that additional portion of the total permissible capitalization, represented in the Commission plan by preferred stock.

The first and refunding committee contends that this increase in contingent-interest debt is justified because of (1) the inclusion of the new debt-retirement provision already described, (2) the creation of a general sinking fund for the new first-mortgage fixed-interest bonds not provided for by the Commission plan, and (3) the sinking fund for retirement of the new general-mortgage bonds, provided for in both plans. The committee argues that the operation of these provisions would seem to assure a retirement before maturity of a far greater amount than

$38,500,000 of indebtedness, the rate of retirement under the compromise plan being substantially in excess of that in the Commission plan.

The committee further urges that the burden of the greatly increased rate of income taxation which will probably continue for at least a number of years and which was not foreseeable at the time the Commission plan was issued, will be partly alleviated by the additional amount of contingent-interest debt. The committee maintains that this is a proper matter for us to take into consideration, particularly since railroads emerging from reorganization will be subjected to relatively greater tax burden than roads which have not had their capitalizations so drastically changed.

It is impossible to estimate the amount of indebtedness which will be retired before maturity through operation of the proposed retirement fund, the amounts of the annual payments being dependent upon the amount of net income earned in the future by the reorganized company and the amount thereof declared as dividends on the new common stock. It is obvious that during the last 3 years the payments might have been substantial. Earnings available for payment of interest in any year equal to the trustee's estimate of $22,059,052 for a normal year would provide nearly $6,200,000 available for payment of the dividend of about $2,886,000 on the new preferred stock and after payment of that dividend, would leave about $3,314,000 available for a $1,104,700 appropriation to the retirement fund and about $2.42 per share for dividends on the 911,840 shares of no-par class-A common stock. On the present scale of earnings, payments into the retirement fund might

be substantially greater. The annual one-quarter of 1 percent (sinking-fund provision for new first-mortgage bonds) would amount to $417,023, and the sinking-fund payments on the general mortgage bonds to $795,876.

As of the effective date, total indebtedness of the reorganized company under the compromise plan would amount to about 63 percent of total capitalization compared to about 55 percent under the Commission plan. Total annual fixed and contingent charges would be about $15,870,000 compared to about $13,700,000 under the Commission plan, an increase of approximately $2,170,000. The amounts of such annual charges under both plans may be compared with the trustee's estimate of normal year income available for payment of interest of $22,059,052 and his estimate of such income for 1944 of $43,429,000.

It is our opinion that a capital structure involving an unduly large amount of indebtedness of fixed maturity even though in large part bearing contingent interest, lessens the opportunity for future financing on a favorable basis. However, in view of existing conditions and the reasonably favorable prospects of sufficient coverage in the future of the full interest requirements under the compromise plan and of retirement of principal, we conclude and find that, as qualified below, the forms of indebtedness included in the revised capital structure provided for by the compromise plan should be approved. We are making this finding because we are satisfied that sufficient of the new general-mortgage bonds will be available at the total necessary price, to supply creditors entitled under the compromise plan to receive, and electing to take, such bonds in part satisfaction of their claims.

We also approve the issue of preferred and common stocks in the amounts proposed and the division of the common stock into two classes as a means of adequately affording recognition to the priorities of the claimants. Certain provisions of the compromise plan affecting these issues of common stock and in respect of the issuance of stock purchase warrants will be later discussed.

Mortgage provisions.—The new first-mortgage bonds of the compromise plan to be issued in the reorganization are to be of three series with options offered, as hereinabove stated, to certain of the senior creditors to accept one or another of the series. The exact amounts of each series to be outstanding or whether bonds of each of the three series will be outstanding is therefore impossible to determine at this time but the total of all first-mortgage bonds will be approximately as set forth in appendix A. The mortgage provisions affecting these first-mortgage bonds differ from the provisions of the Commission plan in certain respects already stated. The series-A bonds will have a life of only 15 years and an interest rate of 3½ percent compared with the 25-year maturity and 3¾ percent interest rate of the series-A first-mortgage bonds of the Commission plan and of the optionally offered series-B bonds of the compromise plan. In view of the small amount of the issue, the new provision for a general sinking fund for retirement of first-mortgage bonds (the proceeds first to be applied to retirement of the 10-year collateral-trust notes secured by first-mortgage bonds), the smaller amount of the 10-year collateral trust notes to be outstanding, and the earnings prospect of the system,

it is our opinion that the reorganized company should not experience difficulty in meeting this maturity.

The provisions of the compromise plan as to the first-mortgage sinking fund should be amended, however, to provide that bonds (or collateral-trust notes) purchased or redeemed out of the sinking fund, instead of being cancelled as provided in the plan, shall, for the purpose of the sinking fund, be retained in the sinking fund and interest paid thereon to the same extent as if the bonds were outstanding, such payments of interest into the sinking fund on such bonds to be additional to the regular sinking-fund payments. This amendment will require a change in the provision of the compromise plan relating to determination of available net income.

In view of the uncertainty at this time as to the needs of the reorganized company for emergency financing during the post-war period and thereafter, the provision in the compromise plan for the issuance of emergency bonds, as hereinabove described, seems to us prudent and should be approved.

In our third supplemental report in *Chicago, M. St. P. & P. R. Co. Reorganization* (April 10, 1944), ... I. C. C. ..., we stated our views as to the proper provisions of a so-called escape clause to be included in the new mortgages. In conformity with our conclusions stated in that report and for the reasons therein given, we find that the provisions to be included in the first mortgage in the present case should be as follows:

> The new first mortgage shall contain a provision, in such form and substance as may be determined by the reorganization managers with the

approval of the court, that the mortgage may at any time, with the approval of the Commission or such other regulatory body as may at the time have jurisdiction in the premises, be modified by the concurrent action of the reorganized company and of the holders of not less than 75 percent in principal amount of all bonds of the mortgage outstanding at the time of such vote so as to postpone the time or times of payment of any fixed interest or accumulations of contingent interest, either before or after the interest is due, or the principal of any or all series of bonds of the mortgage, either before or after maturity, whether bearing fixed or contingent interest which at such time may be outstanding, provided that the payment of the principal of the bonds may not be postponed for a longer period than 20 years from the maturity date designated in the bonds and that the maturity of interest on the bonds may not be postponed for a longer period than 5 years but in no event beyond the maturity date of the principal of the bonds designated in the bonds unless such maturity be postponed, in which event the maturity of interest on the bonds may not be postponed beyond the extended maturity date of the principal.

We have considered the other different or additional provisions, hereinbefore described, contained in the new first mortgage of the compromise plan as compared with the provisions of the first mortgage of the Commission plan and find that they are reaonable and should be approved.

The provisions relating to the new 10-year collateral-trust notes of the compromise plan differ from those of the Commission plan in only one important respect. The collateral security under the compromise

plan would consist of 125 percent of new first-mortgage bonds, series C, compared to 110 percent of series-B first-mortgage bonds as specified in the Commission plan. Although series-C bonds would be outstanding under the compromise plan in a total principal amount of $135,337,000 while under the Commission plan only about $127,000,000 of series-B first-mortgage bonds would be issued, we believe that some additional security is afforded by the greater amount of pledged first-mortgage bonds and that it should increase the likelihood of the notes selling at par without possible recourse to an increase in interest rate in order to achieve that necessary end and it is approved. The additional security justifies, we believe, the provision in the compromise plan that the notes shall be redeemable without the premium provided for in the Commission plan. We also approve inclusion in the plan of the express provision that all collateral-trust notes released from the lien of the note indenture shall be canceled, as well as the underwriting provision hereinabove described.

We have hereinbefore compared the general-mortgage provisions of the compromise plan with those of the Commission plan. As stated, the series-A 4½-percent bonds of the compromise plan correspond to a combination of about 70 percent of the series-A 4-percent bonds and all of the series-B 4½-percent bonds of the Commission plan, while the series-C bonds of the compromise plan are, more or less, substituted for the prior preferred stock of the Commission plan. In the latter plan, the series-A 4-percent issue comprises only about 19 percent of the total issue of general-mortgage bonds and the increase in

interest charges on the series-A bonds of the compromise plan as compared with the total of the A and B bonds of the Commission plan amounts to only $114,325 a year. In view of the fact that the increase in interest rate is small and is one of the factors agreed to by the negotiators in reaching their agreement upon the terms of the compromise plan, we conclude that it should have our approval. We also approve the decrease from 20 percent to 13½ percent in the limit of accumulations of interest on general-mortgage bonds since the lower limit conforms to similar provisions which we have approved recently in other plans of reorganization. *Chicago, R. I. & P. Ry. Co. Reorganization* (January 3, 1944), ... I. C. C. ..., *Chicago, M. St. P. & P. R. Co. Reorganization* (December 6, 1943), 254 I. C. C. ..., *Chicago, I. & L. Ry. Co. Reorganization* (January 3, 1944), 254 I. C. C. ...

Unlike the Commission plan the compromise plan contains no provision for conversion of general-mortgage bonds into other securities. In view of the establishment of the retirement fund for retirement of these bonds, we believe the omission of this feature of the Commission plan is justified. There should be included in the general mortgage an escape clause similar to that which we have approved for the new first mortgage. We approve the other changes, which we have hereinbefore described, in the terms of the compromise plan relating to the new general-mortgage bonds, including the proposed establishment of separate sinking funds for the A and B bonds instead of the one sinking fund as in the Commission plan. In the compromise plan the A bonds to a great extent may be considered as embracing both the A and B bonds of the Commission plan.

We find that the reduction in the amount of the annual payments into the capital expenditures fund from 3 percent to 2½ percent of total railway operating revenues is appropriate in view of the amount of such expenditures made since 1935 when the 3-percent rate provided for by the Commission plan was suggested. The lower rate also is in conformity with provisions which we have approved in other plans of reorganization in which the rate is 2½ percent or less. *Denver & R. G. W. R. Co. Reorganization*, 254 I. C. C. 349; *Minneapolis, St. P. & S. S. M. Ry. Co. Reorganization*, 252 I. C. C. 615; *Chicago, R. I. & P. Ry. Co. Reorganization, supra.* As proposed by the compromise plan and as approved in our former plan, the capital expenditures fund would be applied to provide for, or to reimburse the treasury of the new company for all or any part of the *gross* charges to the investment account (as defined under this Commission's Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads, Accounts No. 701, Investment in Road Equipment, 702, Improvement on Leased Railway Property, and 705, Miscellaneous Physical Property) of the new company not otherwise financed, or not otherwise provided for. It is our view and we find that the plan should specify that the fund should be applied only to the *net* charges to investment account, in order that it will be available only for improvements to the property.

With respect to the provisions for ascertainment of available net income we have already referred to a modification which should be made to reflect our finding that new first-mortgage bonds (or collateral-trust notes) purchased or redeemed out of the sinking fund

should be kept alive and interest paid thereon, such interest payments to add to the accretions to the sinking fund. We also find that the provisions for disposition of net income, should be amended to require that payment into any special sinking funds to be established in respect of first-mortgage bonds issued for acquisition of equipment should have precedence over any other sinking funds established for any first-mortgage bonds, except for the retirement of emergency bonds, which latter sinking fund should have precedence over equipment sinking funds. It is also our opinion and we find that in connection with the statement in the compromise plan that available net income is to be determined for each calendar year as the accounts shall be stated on the books of the reorganized company, without adjustments, an exception, additional to those described in the plan, should be made to the effect that in computing such available net income no amounts shall be deducted for retirements of non-depreciable property.

With these three modifications, we find that the provisions for both ascertainment and disposition of available net income are fair and equitable and they are approved.

Capital-stock provisions.—We have considered all the terms of the plan affecting the issuance of preferred and common stocks and find that the priority of each class of stock is adequately protected and, exclusive of the provisions for a voting trust, escrow arrangement, and the issuance of stock purchase warrants, which subjects will be hereinafter separately discussed, they are approved.

Cash distributions prior to consummation of the plan and effective date.—The previously described provision of the compromise plan for cash distributions to creditors prior to consummation of the plan upon order of the court, appear adequately to preserve the effect of the other provisions of the plan in the event of such distributions and in case of future abnormal earnings may prevent the accumulation in the hands of the debtor's trustee of unnecessary excess cash, a past condition which in part resulted in the reference back to us of the Commission plan.

The provision of the plan, also previously described, for a change in the effective date from that otherwise established as of January 1, 1943, may result in a decrease in indebtedness of the reorganized company with a corresponding increase in common stock at an assigned value of $100 per share. While this provision may also result in a greater measure of control of the company being obtained by junior creditors through an increase in their holdings of the new common stock the senior creditors will to the same extent receive payment in full of their claims. Total capitalization of the reorganized company, with no-par common stock assigned a value of $100 per share, will remain the same. This provision conforms to the principles with respect to selection of an effective date which we stated in our fifth supplemental report in *New York, N. H. & H. R. Co. Reorganization*, (February 8, 1944), 254 I. C. C.——.

The fixing of the basic effective date as January 1, 1943, appears to be one of the results of the negotiations leading to the agreement upon the compromise plan. The junior creditors do not desire a later date

since they expect to benefit in the form of net income earned in 1943 and expected to be earned in 1944, applicable to return on the new common stock which they would receive in the reorganization. The probable date of consummation of a plan in this proceeding depends upon such a variety of factors that it can not be even approximately ascertained at this time. In our opinion, the date decided upon in the compromise plan, coupled with the provisions for subsequent change and interim cash disbursements should be approved.

We approve all of the provisions of the compromise plan relating to cash distributions and effective date, except that the provision as to the rate of interest on the Finance Corporation and bank debts, included in the provisions relating to the effective date, should be modified to provide that interest on these debts should be paid at the rate of 4 percent per annum for reasons hereinafter stated.

Allocations of cash and new securities.—The compromise plan contemplates as an accomplished fact, the payment in full in cash prior to January 1, 1944, of the principal and interest on the five underlying mortgages and 30 percent of the principal amount of all outstanding River & Gulf Divisions bonds together with interest on such 30 percent of principal, all as directed by the court's order hereinbefore referred to. The interim payments of interest on the Missouri Pacific first and refunding bonds, New Orleans first-mortgage and income bonds and International first-mortgage bonds, also ordered by the court would, under the terms of the compromise plan and consonant with the terms of the court's order, be paid out of

the optional cash payments offered under the compromise plan to such bondholders. All equipment obligations of the debtors and of their trustee outstanding upon consummation of the plan would remain undisturbed and be assumed by the reorganized company.

Holders of the underlying Missouri Pacific River and Gulf bonds, which, as we stated in our former report, are an underlying lien on lines of railroad of vital importance to the system and the interest on which has been fully covered even during the depression years, would receive per $1,000 bond for their remaining 70 percent of principal and unpaid interest thereon to the effective date of the plan, the amount of the interest in cash, $300, principal amount, of new 10-year collateral-trust notes, being the entire issue thereof, and, at the election of each holder, either $400, principal amount, of new first-mortgage 4-percent 50-year bonds, series C, or $400, principal amount, of new first-mortgage 3½ percent 15-year bonds, series A, provided, however, that if the Finance Corporation should elect, under the proposed treatment of that claim as hereinafter described, to receive new series-A first-mortgage bonds, then the holders of the River and Gulf bonds could elect to receive either the series-C first-mortgage bonds or the same principal amount ($400), of series-B first-mortgage bonds.

The collateral-trust notes offered to these bondholders would bear interest at 3½ percent or at such other rate as would enable them in the opinion of the reorganization managers to sell at par. They would be amply secured and the best efforts of the

reorganization managers would be used to arrange for their underwriting. In view of these factors we consider these notes to be the practical equivalent of cash if, indeed, the cash is not immediately available to the River and Gulf bondholders through operation of the underwriting provision. As to the remaining 40 percent of their claim, these bondholders would receive an equal principal amount of bonds of the reorganized company having a first lien on 9,556 miles of railroad with a first-mortgage debt per mile of $17,456[7] as compared with a present first lien on 781 miles with a first-mortgage debt per mile of $30,929, after taking into consideration the recent payment in cash of 30 percent of the principal amount of the bonds previously outstanding. A sinking fund is provided for retirement of the new system first-mortgage bonds. The only party to the proceeding representing these bondholders, viz., the protective committee, has agreed to accept this treatment, and we find that it is fair and equitable, represents the full equivalent of the present security held, and maintains the full priority to which these bondholders are entitled.

The first and refunding bondholders would receive under the compromise plan, dependent upon the series held, for each $1,000 bond and unpaid interest to January 1, 1943, from $398 to $404 principal amount of new series-C first-mortgage bonds, from $378 to $384 of series-A general-mortgage bonds, from $149 to $152 of series-B general-mortgage bonds, from $221 to $224 of

[7] This computation is upon a basis which includes neither the principal amount of the new 10-year secured collateral-trust notes to be outstanding in the amount of $10,352,400 nor the approximately $12,940,000, principal amount, of new first-mortgage series-C bonds which would secure the notes. At the expiration of 10 years all of the notes would have matured and been paid and all of the bonds would have been canceled.

preferred stock and from 2.74 to 2.79 shares of class-A no-par common stock. The exact amounts of each class of new security receivable by each series are shown in detail in appendix B.

The more favorable treatment accorded these bondholders than under the Commission plan is partly because of the enhancement in lien position of the bonds and of the River and Gulf bonds and general-mortgage bonds, resulting from the payment of the five underlying mortgages and 30 percent of the principal of the River and Gulf bonds, and partly the result of bargaining in the negotiation of the plan. The new class-A common stock which the Missouri Pacific first and refunding bondholders would receive at $88.98 per share in satisfaction of a part of their claim is participated in by the junior Missouri Pacific general-mortgage bondholders and the Missouri Pacific serial 5¼-percent bondholders. The general-mortgage bondholders, however, would receive the stock on a much less favorable basis. They would take the stock at $100 per share, if computed on the total amount of their claim, and the serial bondholders, who are secured collaterally by New Orleans capital stock, would receive only such amount of the new class-A common stock as the New Orleans stockholders are found in the plan to be entitled to receive, plus an additional amount in recognition of the control element of the pledged 80 percent of New Orleans stock, the remainder of the claim of the serial 5¼-percent bondholders not so satisfied being treated in the same manner as the claims of other unsecured creditors of the Missouri Pacific.

If the new no-par common stock which the holders of first and refunding bonds, series A, would receive

is assigned for purposes of computation a value of $100 per share, the total principal amount of all of the new securities to be received by such bondholders, amounts to $1,426 per $1,000 bond compared to a total claim, both principal and interest, of $1,396. The new securities so receivable would entitle the holder of each outstanding $1,000 bond annually to $16 of fixed interest, $24.60 of contingent interest and $11.10 of dividends on preferred stock, a total annual yield of $51.70 equal to 3.7 percent on $1,396. He would receive additionally whatever dividend might be earned and paid on the 2.74 shares of new class-A common stock. The new mortgage securities receivable would be secured by liens on the entire system instead of only a part thereof, would have the benefit of sinking funds and a debt-retirement fund, the maturity dates would in general compare favorably with those of the present bonds, and the new securities would be part of a greatly reduced and, in our opinion, conservative system capitalization. The class-A common stock receivable, if universally accepted in lieu of the compromise cash offer, would give present first and refunding bondholders, together with their new preferred stock, about 24 percent of the voting power of the reorganized company and the class-A common stock should, we believe, in years of reasonable prosperity yield some return. In our opinion, the cash and new securities allotted the first and refunding bondholders represent the equitable equivalent of the rights surrendered by such bondholders and adequately compensate them for any loss of seniority resulting from the allotment.

The alternative offer of cash for class-A common stock in compromise of a portion of that part of the

claim of the first and refunding bondholders representing their interest, conforms to a basic agreement reached during the negotiations that the same proportion of claim retired, in relation to amount of cash offered would apply to the Missouri Pacific first and refunding bonds and to the International first-mortgage bonds. The New Orleans first-mortgage and income bondholders would receive a larger proportional amount of cash in compromise of a part of their interest than would the senior creditors of the other two groups since the New Orleans proportionately had a greater amount of excess cash in its treasury available for use in compromising interest claims of senior creditors. Having approved the general principle of these compromise offers of cash, we see no reason to disturb this allocation in respect of the first and refunding bonds, which is the result of an agreement by the negotiators and appears to have been reached upon a fair and equitable basis. No objections have been offered to the proposed treatment to be accorded the first and refunding mortgage bondholders other than such as may be assumed from the representations of parties objecting to the compromise plan in its entirety.

The proposed treatment of the other two general first-mortgage bond issues of the system, viz., the New Orleans first-mortgage and income bonds and the International first mortgage, is also considerably improved over that afforded by the Commission plan.

During the negotiations representatives of holders of the New Orleans first-mortgage and income bonds demanded that these bondholders receive a greater amount of new first-mortgage bonds than allotted under the Commission plan. Also, representatives of

the International first-mortgage bondholders sought some participation in that issue. In our former report we found that the International's record of earnings as of the date of the plan therein approved did not warrant an allocation of new system first-mortgage bonds to outstanding first-mortgage bondholders of the International. We have hereinbefore reviewed the more recent earnings of the International. While we consider these earnings abnormal, apparently they have increased recently in a greater degree proportionally than the earnings of the other two groups of the system. Although, in our opinion, such future relative prosperity of the International is not necessarily assured, we believe that such earnings are a factor, which, together with the accumulation of cash in the International treasury, warrants a tender of some of the new first-mortgage bonds to this debtor's senior creditors.

Holders of New Orleans first-mortgage and the equally secured and now fixed-interest-bearing income bonds of that debtor would receive, dependent upon the series of bonds held, for each $1,000 bond and unpaid interest thereon to January 1, 1943, from $551 to $640, principal amount, of new first-mortgage series-C bonds, from $392 to $455, principal amount of general-mortgage series-A bonds, and from $120 to $139, principal amount, of general-mortgage series-B bonds, the total principal amounts of the new securities receivable, equaling, in the case of each series of first-mortgage bonds and in the case of the income bonds, the total of the claims for both principal and unpaid interest. There is no question of priorities of mortgage creditors in the case of the New Orleans properties.

Taking the outstanding series-A 5½-percent first-mortgage bonds as an example, the holder of each $1,000 bond, on which the unpaid interest is $234, would be entitled annually to $25.60 of fixed interest and $27.42 of contingent interest, a total of $53.02, which is equal to 4.3 percent on $1,234. Substantially the same reasons which we gave for approving the treatment of the Missouri Pacific first and refunding bondholders apply to the proposed allotments to the New Orleans first-mortgage and income bondholders, particularly as to the benefit which will be derived by obtaining liens on a greater mileage comprising the entire system and the benefit of the sinking and retirement funds which will be applicable to the new securities to be received in the reorganization. It is our opinion that the new reorganization securities which these New Orleans bondholders would receive represent the equitable equivalent of the rights which they would surrender and compensate them for any loss of seniority resulting from the allotment.

As we have stated, the optional alternative offer to these New Orleans bondholders of excess cash in compromise of interest claims is higher proportionally than the compromise cash offers to the Missouri Pacific first and refunding bondholders and International first-mortgage bondholders in relation to the amounts of their interest claims but is justified by the relatively greater amount of excess cash in the New Orleans treasury compared with the amount of unpaid interest on the New Orleans first-mortgage and income bonds. We approve the terms of this compromise cash offer.

Holders of International first-mortgage bonds would receive, dependent upon the series held, for

each $1,000 bond and unpaid interest thereon to January 1, 1943, from $116 to $123, principal amount, of new first-mortgage series-C bonds, from $512 to $542, principal amount, of general-mortgage series-A bonds, from $145 to $153, principal amount, of general-mortgage series-B bonds, from $231 to $244, par value, of preferred stock and from 4.73 to 5.03 shares of no-par class-A common stock. Assigning the new common stock a value of $100 a share, the total principal amounts of new securities offered these first-mortgage creditors exceeds by over $50 per $1,000 bond the amount of their claims, including principal and unpaid interest. While holders of the outstanding junior International adjustment bonds would, under the plan, participate in the issue of the new class-A common stock, which is the most junior class of new security offered the International first-mortgage bondholders, the junior interest would receive only 9.5 shares of such stock for each $1,000 bond and unpaid interest thereon of $735. The other new securities proposed to be given the adjustment-mortgage bondholders consist of new class-B common stock and warrants to purchase shares of that stock at $100 per share.

Taking the series-A 6-percent International first-mortgage bonds as an example, (the treatment of each series being equivalent but the exact amounts differing because of the varying interest rates applicable to the different series), the reorganization securities receivable by the holder of each $1,000 bond on which unpaid interest amounts to $510, would entitle him annually to $4.92 of fixed interest, $32.04 of contingent interest and $12.20 of preferred-stock dividends, the total of $49.16 being equal to

approximately 3.26 percent on $1,510. In addition such holder would be entitled to receive whatever dividend might be earned and declared on 5.03 shares of new class-A common stock.

The optional alternative offer of excess cash in lieu of the new class-A common stock proposed to be given the International first-mortgage bondholders in satisfaction of a part of their claim is the same proportionally as that offered the Missouri Pacific first and refunding bondholders, appears to be justified by the amount of the cash accumulation in the International's treasury and, for the same reasons stated above in connection with our discussion of the cash offered the first and refunding bondholders, is approved.

The trustee under the International first mortgage takes the position that it will not oppose the compromise plan unless directed to do so by the bondholders, that the treatment offered is the minimum to which the bondholders are entitled, but that it is to their interest to accept the plan. However, various objections to the entire plan and to the specific treatment proposed thereunder for the International first-mortgage bondholders are advanced by a protective committee representing holders of about $3,000,000, principal amount, of these bonds. Our decisions upon many of these objections to the plan as a whole already have been stated in our discussion hereinbefore of various terms of the plan or will be disposed of in our later discussions of other terms of the plan.

This protective committee considers it established by the evidence that the International would contribute about 10 percent of the physical property and

mileage used in the operation of the proposed system and about 8½ percent of the earnings therefrom, whether based on current conditions and estimates or upon averages going back over periods of 10 or more years. The committee urges that the allocation of new system securities should be substantially on a basis of 8½ percent of each issue of first-mortgage fixed-interest bonds and of the first series of general-mortgage income bonds and on a basis of 10 percent of any subordinate issue of general-mortgage bonds and 10 percent of all or of each series of the preferred stock of $100 par value. If, in referring to the earnings of the International, the committee means earnings available for payment of interest, the record of such earnings, which we have reviewed hereinbefore and in our previous report and which we consider significant, does not bear out the committee's contention.

The International first-mortgage bondholders would surrender their first lien on 1,100 miles of railroad but would receive in exchange, for about 65 percent of the principal of their claim, first and second liens on the entire system lines comprising about 9,556 miles and for the remainder of their claim, shares of preferred and common stock which would give them a substantial voting interest in the new corporation and should, in years of fair earnings, supplement the return which they will receive on their investment. In view of the International's record of earnings in the past 10 years, which we have heretofore reviewed, we find that this allocation of new securities represents the equivalent of all of the rights which they would surrender, fully compensating them for the surrender of their first lien upon the relatively small

mileage of the International now securing the full amount of their claim, and for surrender of their other senior rights.

Regarding the treatment of the junior claims of the system, namely, the Missouri Pacific general-mortgage bonds, serial 5¼ percent bonds, and convertible bonds, the New Orleans capital stock, and the International adjustment bonds, the following formulas were used by the negotiators of the compromise plan.

The Missouri Pacific general-mortgage bondholders, being senior to the holders of the convertible bonds of that debtor, would receive the amount of their entire claim for both principal and interest in new class-A common stock at $100 per share, thus receiving 13.93 shares per $1,000 bond. The total number of shares so allotted the general-mortgage bondholders under the compromise plan compared with the number of shares of the senior class of common stock allotted under the Commission plan to these same bondholders is in the ratio of approximately 186 to 100.

This ratio was then applied to the number of shares of common stock allotted in the Commission plan to the International adjustment bonds, to the New Orleans capital stock and, after being increased as in the Commission plan to represent the control value of the New Orleans pledged stock, to the Missouri Pacific serial 5¼-percent bonds which are secured by New Orleans stock. The application of this ratio extends only to a determination of the amounts of class-A common stock offered to holders of each of those claims. The proponents of the compromise plan

contend that this class-A common stock corresponds generally with the common stock of the Commission plan.

Holders of the New Orleans capital stock, the Missouri Pacific serial 5¼-percent bonds and the International adjustment bonds are additionally allotted some of the new class-B common stock, while holders of the Missouri Pacific unsecured convertible bonds are allotted only class-B common stock. Holders of unsecured claims against the International would receive only class-B common stock purchase warrants. Holders of unsecured claims against the New Orleans would receive new class-A common stock in an amount equal at $100 a share to the entire amount of their claims.

The Missouri Pacific unsecured creditors in return for surrendering any right to receive class-A common stock by reason of their claim to the free assets, which have been hereinbefore analyzed, had their treatment materially improved over that accorded them under the Commission plan, particularly in respect of the number of shares of common stock allocated to them. However, the class-B common stock which they will receive, is distinctly junior to the class A as to dividends and priority in liquidation, but has equal voting rights. This latter feature results in the allotment to the convertible bondholders under the compromise plan of about 20 percent of total voting power compared with only about 5 percent under the Commission plan.

The amount of the new class-B common stock which they would receive at an assigned value of $100 per share equals only the principal amount of their claim,

or about 64 percent of their total claim. This 36 percent reduction in satisfaction of total claim was likewise applied in the compromise plan to the amounts of series-B common stock which the other junior claimants receiving any of the junior stock (viz, the Missouri Pacific serial 5¼-percent bondholders, as to the unsecured part of their claim, the International adjustment bondholders, and the New Orleans stockholders) would otherwise receive if allotted amounts at an assigned value of $100 a share equal to the amounts of their entire claims. The differences between such entire amounts and the total amounts of common stock receivable are represented by offers of warrants to purchase class-B common stock at $100 per share. All these negotiations resulted in the allocations of new stock to junior creditors of the Missouri Pacific and International and to the New Orleans stockholders as shown in appendixes A and B.

Although shares of new class-A common stock are allotted to Missouri Pacific general-mortgage bondholders in an amount at $100 per share equaling their claim and are also allotted to Missouri Pacific serial 5¼ percent bondholders, who have no mortgage lien upon railroad tracks or roadbed, the latter would receive only such amount as they are entitled to by virtue of their collateral security, consisting of New Orleans capital stock. Considering the amount of indebtedness of the New Orleans and the application of surplus cash in the New Orleans treasury to the retirement of part of this indebtedness, it is our opinion that holders of the capital stock are entitled to receive some of the class-A common stock.

Largely in connection with the claims of the holders of the serial 5¼ percent bonds and New Orleans

stock, counsel for certain individuals owning these securities attempted at the hearing to prove various alleged acts of malfeasance by directors of the Missouri Pacific during a period extending from about the year 1926 to 1932, prior to the filing of the debtor's petitions in bankruptcy. Counsel attempted to prove these acts by cross-examination of Wyer, who appeared as the principal witness for the proponents of the compromise plan. Wyer is not now an officer or employe of any of the debtors, but formerly held the position of secretary-treasurer of the Missouri Pacific. The matters which were the subject of counsel's cross-examination of Wyer had not been a subject of direct examination. Counsel's queries were directed in large part to the question of whether Alleghany Corporation, which counsel contends controlled the Missouri Pacific during the above period, acting through the board of directors of the Missouri Pacific caused that company improperly to advance large sums of money to the New Orleans to enable the latter to pay unearned dividends on its capital stock. Counsel alleges that the major part of these dividends was received by the Missouri Pacific, which in turn improperly paid dividends on its own stock for the benefit of Alleghany Corporation.

The notes representing the unpaid advances by Missouri Pacific to the New Orleans are secured by the pledge of all of the International capital stock except directors' qualifying shares. The notes are pledged with the Finance Corporation as part security for its loans to the Missouri Pacific and the amount owing on the notes plus accrued unpaid interest is now about $16,000,000. The dividends on the New Orleans

capital stock allegedly improperly paid by the New Orleans to the Missouri Pacific amount to about $4,000,000.

The parties holding the Missouri Pacific secured serial 5¼-percent bonds and New Orleans stock, who are represented by this counsel, own $80,000, principal amount, of the bonds and 39 shares of the New Orleans stock. They purchased the bonds as a speculation in the latter part of 1942 and early in 1943 at a price of about 10, and acquired the stock in the last quarter of 1942 at about $5 or $6 a share. They did not become parties to this proceeding until September 30, 1943, a little less than 3 weeks prior to the further hearing.

Counsel also attempted by cross-examination of Wyer to prove improper actions by the Missouri Pacific directors in an attempted acquisition by purchase of stock of the so-called Missouri Teminals. The matter of the acquisition of these terminal properties was referred to in our former report of January 10, 1940, in this proceeding. That controversy has since been settled by agreement approved by the court.

Counsel further attempted to prove an improper acquisition by the Missouri Pacific through the medium of the Missouri Pacific Transportation Company of some of its own stock and International adjustment bonds. This matter is now in the process of litigation by order of the court.

At the further hearing, counsel for the Finance Corporation objected to the cross-examination of Wyer in respect of the advances by Missouri Pacific to the New Orleans and the payment of dividends by

the latter on the grounds that the issuance of the notes representing the advances was approved by us under the provisions of section 20a of the Interstate Commerce Act and that in the present reorganization proceeding no question has heretofore been raised as to the validity of the claim on the advances although our plan was also approved by the District Court and has been argued before the Circuit Court of Appeals and briefs submitted in that court. Other parties joined in the objection.

The hearing officer refused to allow counsel's cross-examination to proceed, basing his ruling on the ground that it did not constitute proper cross-examination. Thereupon counsel made an offer of proof of evidence which he proposed to adduce through questions addressed to Wyer. The offer of proof was denied. Counsel contends on brief that these rulings constitute error and that we should afford him an opportunity at a future hearing to examine this witness on these subjects.

Counsel did not attempt to produce at the hearing any of the Missouri Pacific directors alleged to have committed acts of malfeasance, relying solely, insofar as testimony is concerned, upon an effort to obtain confirmation of the facts by cross-examination of Wyer. In his brief, counsel states that he believes that all of the evidence in support of his contentions as to wrongful acts by Alleghany Corporation is already in the record of this proceeding. He specifically enumerates the documents of record constituting this evidence.

Furthermore, at a previous hearing in this proceeding on September 28, 1937, these same alleged

wrongful acts by Alleghany Corporation and the control exerted by that corporation over the debtor were the subject of considerable examination of the same witness Wyer by another counsel. At that time also, reference was made by that counsel to certain documents of record in support of his contentions. These documents included reports on the debtor by a firm of auditors, Price-Waterhouse & Company, an answer by the Missouri Pacific trustee to an application by a former Missouri Pacific counsel for compensation, the decision by the court denying the application, a report by a special counsel for the trustee of the Missouri Pacific and, in addition, reference was made to certain of our annual reports to the Congress.

Thus it will be seen that we have been well acquainted with the basis of these charges against Alleghany Corporation.

Counsel contends that these alleged illegal acts committed in the past by the then directors of the Missouri Pacific, which he alleges were performed under the influence or by the direction of Alleghany Corporation, require us to invoke the doctrine commonly known as the "instrumentality rule"[8] and that we should thereby find that Alleghany Corporation is not entitled to participate in the reorganization of the Missouri Pacific and should further find that the compromise plan is invalid as a result of the securities, rights, and benefits given under it to Alleghany Corporation.

In our opinion, the ruling on counsel's cross-examination of Wyer to which counsel excepts was correct. Counsel's examination of Wyer did not constitute

[8] See Taylor v. Standard Gas & Electric Co., 306 U. S. 307.

proper cross-examination, nor, in our opinion, would it have been productive of useful information in respect of the subjects under discussion additional to that already of record. We affirm this ruling. It is our opinion that the matters which were the subject of counsel's examination of Wyer should be left to litigation in the courts, or, in any event, are not a proper subject of litigation in this proceeding in the manner proposed by counsel. An important duty of the trustee in bankruptcy was to investigate and advise the court of any irregularities in the management of the debtor preceding bankruptcy and of any transactions constituting causes of action in the debtor's behalf. We understand that the trustee performed his duty in that regard. We are not advised that any of the acts about which counsel sought to inquire, except the litigation and settlement of the controversy over terminal properties and the matter of the purchase by the Missouri Transportation Company of Missouri Pacific stock and International adjustment bonds has been deemed by the trustee and the bankruptcy court to afford grounds for legal action.

We will deny counsel's request for a reopening of the hearings to enable him further to examine Wyer upon these matters. Although more than 12 years have elapsed since the Missouri Pacific made its advances of cash to the New Orleans, as above stated, the invalidity of any part of these advances has never been established and we will assume for the purposes of this proceeding that they are valid obligations of the New Orleans in determining the right of, and extent to which, holders of Missouri Pacific 5¼-percent bonds and the New Orleans stockholders should participate in the plan of reorganization. As

to the extent of participation which Alleghany Corporation will receive, we shall accord it only the same treatment as other similarly interested creditors, i. e., that to which it is entitled through its ownership of securities of the debtors.

If, however, the court shall rule that Alleghany Corporation is not entitled to participate in this reorganization, we conclude and find that any new class B common stock and warrants to subscribe to such stock, which, by the allocations of new securities approved herein, would be distributed to Alleghany Corporation, should not be allotted to that corporation but should be redistributed so as to increase the allotments of class B common stock, and warrants receivable by the other unsecured creditors of the Missouri Pacific group, and by holders of its serial 5¼-percent bonds, the increase in each case to be in the same proportion as that which the amount of such stock and warrants otherwise receivable by each such other unsecured creditor and each serial bondholder bears to the total amount of such class-B common stock and warrants authorized herein to be issued to all such other Missouri Pacific unsecured creditors and the serial bondholders.

No creditors of the International junior to the holders of the adjustment bonds of that debtor would participate in the reorganization other than by stock-purchase warrants. The adjustment-mortgage bondholders have a second lien on the International property and are allotted both class-A and class-B common stock but not in a total amount equal, at $100 per share, to the amount of their claim. It is our opinion and we find that, in view the past, present and prospective earning power of the International

and the large issue of its first-mortgage bonds outstanding, the treatment proposed to be accorded the adjustment mortgage bondholders under the compromise plan, aside from the offer of stock-purchase warrants, is fair and equitable and that the unsecured creditors and stockholders of the International in view of the absence of free assets of that debtor of any substantial value, should be found to have no interest in the debtor's estate and that the plan which we shall approve herein need not be submitted to such unsecured creditors and stockholders of the International for their acceptance or rejection. The question of whether stock-purchase warrants should be issued and, if so, the extent to which the International adjustment-mortgage bondholders and holders of unsecured claims against that debtor should participate in their issues will be a subject of subsequent discussion herein.

We also find that the treatment proposed to be accorded the general-mortgage bondholders of the Missouri Pacific, considering the amount of prior indebtedness under the present capitalization, the amount of permissible new capitalization, the fair likelihood of a return being received as dividends on the new stock, and the substantial voting power accruing to these bondholders through the allotment of the new stock, represents the equivalent of the rights surrendered by them or of any loss of seniority resulting from the allotment of new securities.

We also find that the treatment accorded the Missouri Pacific serial 5¼-percent bonds and that accorded the unsecured creditors of the Missouri Pacific and unsecured creditors and stockholders of the New Orleans (aside from the allocations of stock-

purchase warrants) is justified by the total value and earning power of these properties and the value of the free assets of these debtors and, in view of the rights of prior creditors and within the new capitalization which we have found justified, represents the full extent of participation in the plan of reorganization to which they are entitled.

The treatment of the holders of Plaza-Olive Building first-mortgage bonds is the same as that afforded by the Commission plan, the separate new mortgage on the Plaza-Olive building being approved in both reports.

There remain to be considered the allotments under the compromise plan to the Finance Corporation, J. P. Morgan & Company and associates, the Railroad Credit Corporation, and holders of bonds issued under four small divisional or branch-line mortgages.

Referring to the Finance Corporation, bank, and Railroad Credit Corporation loans, we stated in our report of January 10, 1940:

> The loans represented by these claims were made under special circumstances to aid the debtors in emergencies, are relatively well secured by collateral, and appear to be entitled to special treatment as compared with claims of creditors to whom it is proposed to give the remainder of the first-mortgage bonds.

We also stated that the Railroad Credit Corporation loans appeared from the evidence of record to be secured even better than either the Finance Corporation or bank loans. As hereinbefore stated, the judge in referring the plan back to us expressed the opinion that accumulated cash might be used to liquidate

some or all of the Finance Corporation and bank loans, and several parties to this proceeding urge on brief that these claims be satisfied by payment of the principal in cash and by compromise payments in cash of unpaid interest.

As of January 1, 1940, the effective date of the Commission plan, there were owing on the Finance Corporation loans $23,134,800 of principal and $8,630,275 of unpaid interest. Under that plan, the Finance Corporation is allotted $317,650 of cash, $23,135,000 of new series-A 3¾ percent 25-year first-mortgage bonds, $2,859,000 of series-B convertible 4½-percent 75-year general-mortgage bonds and $5,453,500 of second-preferred $5 dividend no-par stock at $100 a share.

As of January 1, 1943, the effective date of the compromise plan, the same amount of principal was owing but unpaid interest had increased to $9,918,342. Under that plan this creditor would receive $4,049,137 in cash, representing a compromise settlement of the interest on a basis of 3½ percent per annum instead of the contract rate of 6 percent, and, at its election, would have the principal satisfied in either new series-A 15-year 3½-percent first-mortgage bonds or new series-B 25-year 3¾-percent first-mortgage bonds.

The Finance Corporation did not participate in the negotiations resulting in the compromise plan. It objects to the treatment afforded it by that plan but has agreed to accept, in satisfaction of its entire claim, cash equal to the principal amount of its claim or bonds equal in money's worth to the principal amount of its claim (which shall be determined by us), plus cash equal to 4-percent interest from date

of bankruptcy to January 1, 1943 on the principal of its claim. If the Commission plan had gone into effect as of January 1, 1940, its effective date, the Finance Corporation would have received 3¾ percent per annum interest on the new first-mortgage bonds allotted to it under that plan in a principal amount equal to the amount of principal of its claim. This compares with the 3½-percent compromise cash interest offer under the compromise plan and the 4-percent cash basis which the Finance Corporation states that it will accept.

The Finance Corporation contends that its collateral security, which it analyzes in detail, justifies the payment in full of its claim in cash but, if we should decide to adopt generally the compromise plan, it agrees to accept the compromise as above stated in order to facilitate the reorganization. The amount of cash required to satisfy the interest claim, if calculated on a 4-percent basis with respect to interest accrued since the date of bankruptcy plus $518,792 of unpaid interest at the contract rate which had accrued prior thereto, gives $5,329,242 or an increase of $1,280,105 above that required under the compromise plan. The compromise plan does not provide an alternative offer of new securities in satisfaction of the part of the Finance Corporation claim representing interest.

The Finance Corporation contends by brief that, if the same treatment were accorded it in respect of the pledged system securities as is accorded other owners of such securities under the terms of the compromise plan, it would be entitled to the following allocations of cash and new securities: Cash

$2,447,806, first-mortgage series-C bonds $14,060.900, general-mortgage series-A bonds $13,079,600, general-mortgage series-B bonds $4,837,500, 5-percent preferred stock $7,159,500, class-A common stock, at $100 a share, $17,470,643, and class-B common stock, at $100 a share, $2,199,000, the total of all new securities being $61,254,949, plus warrants to purchase 56,777 shares of class-B common stock. The potential annual income from the above securities, including the dividend on the preferred stock but excluding any dividends on the common stock, is $1,750,868.

Additionally the Finance Corporation is secured by various items of other collateral including $92,700 par value of American Refrigerator Transit Company capital stock, the value of which Wyer estimated at $1,158,750 and Peet, assistant chief accounting and financial officer of the trustee of the debtor, and William W. Sullivan, chief of the railroad division of the Finance Corporation, at approximately $2,030,000; and $11,475,000, par value, of Texas and Pacific Railway Company common stock having a substantial value.

The first and refunding committee disagrees with the Finance Corporation as to the value of the collateral, contending that such part of the offer of new securities under the compromise plan as purports to be in satisfaction of the principal of the claim fully recognizes the value of the Finance Corporation's listed collateral and that the remainder of the collateral measures the extent to which unpaid interest should be recognized. Wyer ascribed a total value of $2,729,277 to this latter part of the total collateral and the committee contends that it is of such a

nature that it is entitled to recognition only by either (1) a distribution of new stock or (2) a commutation of such stock capitalization into a smaller amount of senior securities or an even smaller amount of cash. The committee urges that the Finance Corporation should be offered only the securities and cash allotted under the compromise plan or, in lieu of the amount of cash offered, which the committee admits could probably be justified only as a compromise offer subject to acceptance by the Finance Corporation, additional securities consisting preferably of $9,918,342, par value, of new preferred stock or, as a maximum, $1,763,120, principal amount, of new series-A general-mortgage bonds, $409,280, principal amount, of new series-B general-mortgage bonds, and $7,745,942, par value, of new preferred stock. The committee bases its contention to a large extent upon the treatment which it contends was accorded the interest part of the Finance Corporation debt under the Commission plan.

This first and refunding committee and representatives of the senior mortgage creditors of the other two principal debtors contended at the hearing that, if we find that a larger amount of cash should be allotted the Finance Corporation in compromise settlement of its claim for interest, proportionally larger amounts of cash also should be offered holders of the three senior mortgages of the system. Wyer testified that the sum of these additional increases would be about $10,400,000 if the Finance Corporation compromise cash payment were made on a 4-percent interest basis.

Upon consideration of the various contentions in respect of satisfaction of the Finance Corporation

debt, the value of its collateral security, and the changed conditions since the effective date of the Commission plan, particularly as to the existence of the large amount of excess cash in the Missouri Pacific treasury, we conclude and find that this creditor should receive in full satisfaction of its claim the same amount of new securities allotted under the compromise plan but that the cash allotment should be increased by $1,280,105 to a total of $5,329,242, representing a compromise at 4 percent per annum of its interest claim, accrued since bankruptcy.

J. P. Morgan & Company and affiliated banks are, from the nature and value of the collateral security for their loans, entitled to treatment at least equivalent to that accorded the Finance Corporation. Although the banks have signified that they would accept the terms of the compromise plan, we are of the opinion and find that, to avoid unfair discrimination in view of the above improvement in the treatment accorded the Finance Corporation, these bank creditors should receive an increase of $321,510 in their cash allotment, the resulting total being $1,480,382.

These loans from the Finance Corporation and the banks were made to aid the debtor in emergencies, the proceeds were used in part at least, to permit interest payments to continue to be made on the obligations of the debtors, and the securities for the loans are of a different nature from the mortgage liens of the senior creditors of the Missouri Pacific, New Orleans, and International. In our opinion these increases in the cash payments to the Finance Corporation and J. P. Morgan & Company and associ-

ates, can be met out of excess cash in the Missouri Pacific treasury not required for other purposes. We find that the above allocations of cash and new securities to these two creditors represent the fair equivalent of the value of their claims, will not discriminate unfairly against the senior mortgage creditors and should be approved.

The Railroad Credit Corporation would receive under the compromise plan for the principal of the notes of the Missouri Pacific and International held by it plus accrued unpaid interest thereon to January 1, 1943, $3,806 in cash and, at its election, $2,487,000, principal amount, of either new series-A or series-B mortgage bonds. The plan includes the following further provision in respect of these loans:

> The Railroad Credit Corporation shall release and surrender to the New Company its rights and interests in the Debtors' distributive shares under the marshaling and distributing plan, 1931, from and after the date of consummation of the Plan, and any proceeds from such shares applied by the Railroad Credit Corporation to the payment of principal or interest of or upon the obligations of the Debtors after the date of consummation of the Plan, unless such application shall have been made by authority of a court of competent jurisdiction, shall be turned over to the New Company.

The Railroad Credit Corporation contends that the collateral security for its loans warrants their payment in full in cash and expresses doubt that the new securities to which it will be entitled under the compromise plan would sell at their face value in the near future. If the corporation were sure that they would be saleable at their face value, it would have

no objection to the plan but in the absence of such assurance, it requests that the plan be modified to the extent of permitting the Railroad Credit Corporation to retain the right to the distributive share of the debtors in the marshaling and distributing plan, 1931, until, and only until, the amount thus credited, together with the proceeds from the sale of the new bonds which it will receive in the reorganization, shall equal the principal of, and accrued unpaid interest on the loans.

No objections to this proposed modification have been offered either at the hearing or by brief. In our opinion, the security for the loans is sufficient to warrant their payment in full in cash or its equivalent and we find that the modification requested should be approved.

The amounts above stated of cash and new securities allocated under the compromise plan to the Finance Corporation, J. P. Morgan & Company and affiliated banks, and Railroad Credit Corporation are stated in respect of the amounts of these claims as of January 1, 1943. Certain payments have been made on these claims since that date and further payments doubtless will be made before consummation of the plan, representing income or other funds received in the interim on collateral held by these creditors and, in the case of the Railroad Credit Corporation, also representing proceeds from the distributive shares of the debtors under the marshaling and distributing plan, 1931. Under the terms of the compromise plan such payments up to the date of consummation of the plan are to be retained by these respective creditors and applied to the claims in accordance with the pro-

visions of the plan as hereinbefore approved for application of cash distributions to creditors prior to consummation of the plan. This procedure with respect to such payments on these claims is approved.

The treatment proposed to be accorded the Little Rock & Hot Springs Western Railway Company first-mortgage 4-percent bonds, hereinafter referred to as the Little Rock bonds, is improved over that provided under the Commission plan. As of January 1, 1940, this claim amounted to $1,140,000 of principal and $228,000 of accrued unpaid interest, the total being $1,368,000. Under the Commission plan the trustee under the mortgage would receive, in consideration for releasing from the lien of the mortgage the 31 miles of line owned and operated by the Missouri Pacific, $686,500 of new prior-preferred $100 par value 5-percent stock, $228,000 of no-par value $5 a year dividends second-preferred stock, and, additionally, there would be deposited with the mortgage trustee for the benefit of these bondholders $453,600, principal amount, of Rock Island, Arkansas & Louisiana-Little Rock & Hot Springs Western 4-percent notes, guaranteed by the Chicago, Rock Island & Pacific Railway Company, owned by the Missouri Pacific and now pledged by it as part security for its loan from the Railroad Credit Corporation. These notes are of doubtful value at the present time.

As of January 1, 1943, the effective date of the compromise plan, unpaid interest on the Little Rock bonds had increased to $364,800, the total claim as of that date being $1,504,800. Under the compromise plan the mortgage trustee would receive $684,000 of new series-A general-mortgage bonds and $820,800 of

new 5-percent preferred stock, the amount of the allotment of preferred stock being increased over the amount of the comparable second-preferred stock allotted under the Commission plan, because of the increase in the interest claim between the effective dates of the two plans and the fact that the notes guaranteed by the Chicago, Rock Island & Pacific Railway Company would, under the compromise plan, be released to the reorganized company upon consummation of the plan of reorganization instead of being delivered to the Little Rock mortgage trustee in part satisfaction of the claim.

The Little Rock bondholders voted unanimously to reject the Commission plan and have urged their objections before us, the district court, and the circuit court of appeals. In view of the improvement in treatment in a plan of reorganization which can now be generally afforded creditors, it is our opinion that this improved treatment of the Little Rock senior creditors, which they state is still insufficient, is justified. Upon consideration of the entire record in this proceeding including the past earnings record of these 31 miles of railroad, we further find that, in view of the system-lien and sinking-fund and retirement provisions of the new general-mortgage bonds to be allotted the Little Rock bondholders and the prospective earnings on the new preferred stock, the treatment proposed represents the equivalent of the rights surrendered by these bondholders or of any loss of seniority resulting from the allotment of the new securities.

The Little Rock mortgage trustee and the bondholders' protective committee object to the inclusion

in any plan of reorganization of a provision for a judicial sale, if the court should order one, of this part of their mortgaged property to others than the reorganization managers. This same position was taken by these parties prior to the issuance of our plan of January 10, 1940, and in our report of that date approving the plan we discussed the matter and decided to include the provision. For the same reasons therein stated, we reaffirm that decision.

Holders of Central Branch Union Pacific Railway Company first-mortgage bonds, hereinafter called the Central Branch bonds, under the compromise plan, would receive for each $1,000, principal amount, of bonds plus accrued unpaid interest of $363, $60 of cash, equivalent to three interest coupons, $370 of new first-mortgage 4-percent series-C bonds, $230 of general-mortgage 4½-percent series-A bonds, $450 of general-mortgage 5-percent series-B bonds and $253 of 5-percent preferred stock.

In our opinion this represents an improvement over the treatment accorded these bondholders by the Commission plan under which they are offered no cash, $270 of series-B 4-percent first-mortgage bonds, $328 of series-A 4-percent general-mortgage bonds, $472 of prior-preferred stock and 1.73 shares of no-par value second-preferred stock. As of the date of the Commission plan the claim per $1,000 bond was $120 less than as of the effective date of the compromise plan.

The trustee under this mortgage and certain holders of the bonds contend that the improvement in treatment proposed is not sufficient to reflect the increase in earnings of their property if proper consideration

is afforded the earnings applicable to 1.89 miles of main line subject to their mortgage located at Atchison, Kansas and giving access to various industrial facilities. They urge that the formula used in determining the earnings of the Central Branch does not give any substantial consideration to this factor. They did not, however, at the hearing propose any other formula to be applied nor offer evidence in support of their contentions, nor contend that the treatment accorded the Central Branch bondholders was not equitable if the formula is applied. Wyer testifying for the proponents of the plan, showed that an application of the earnings formula to the Central Branch and to the Missouri Pacific as a whole excluding the Central Branch, indicates that the system earnings increased more than eight times as much as those of the Central Branch when 1941 earnings are compared to those of 1939 and four times as much when 1942 earnings are compared to those of 1939.

It is our opinion based upon a consideration of the entire record of this proceeding, that the treatment proposed to be accorded the Central Branch bondholders adequately represents the value of their claim and that these bondholders would receive under the compromise plan the equivalent of the rights surrendered and full compensation for any loss of seniority resulting from the allotment of securities.

Holders of Cairo & Thebes first-mortgage 4-percent bonds under the compromise plan would receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, amounting to $133, $100 of cash, being the equivalent of five interest coupons, $750 of first-mortgage series-C, 4-percent bonds, and $283 of gen-

eral-mortgage series-A 4½-percent bonds. As of January 1, 1940, the effective date of the Commission plan, unpaid interest amounted to $13.33 per $1,000 bond and under that plan each holder of a $1,000 bond would receive $13 of cash, $750 of series-B 4-percent first-mortgage bonds and $250 of series-B 4½-percent general-mortgage bonds. The treatment accorded under both plans is approximately the same, except that under the compromise plan interest accruing between the two effective dates of the plans increases the cash payment, thus recognizing the earning value of the Cairo & Thebes property to the Missouri Pacific during the war period. It is our opinion and we find that these allotments of cash and new system securities represent the equitable equivalent of the value of the securities surrenderd by the Cairo & Thebes bondholders and constitute full compensation for their surrender of any seniority rights. While payment of part of the claim is with a security which is not a first lien, both classes of bonds allotted will be secured by mortgages having liens on the entire property of the Missouri Pacific system.

Holders of Boonville, St. Louis & Southern first-mortgage 5-percent bonds, hereinafter referred to as the Boonville bonds, would receive for each $1,000 bond and unpaid interest thereon as of January 1, 1943 amounting to $396, $50 of cash, $274 of series-C 4-percent first-mortgage bonds, $274 of 5-percent preferred stock and in addition would receive a prorata share of the net cash proceeds from the abandoned line of this railroad, amounting as of December 31, 1942 to $254.32 per $1,000 bond. As of the effective date of the Commission plan, unpaid interest per

$1,000 bond amounted to $245.83 and each holder of a $1,000 bond would receive under that plan, cash comprising only the prorata share of the cash proceeds from the sale of the abandoned line, $274 of series-B 4-percent first-mortgage bonds and 2.74 shares of no-par value $5 a year dividend second-preferred stock. Thus, the treatment accorded these bondholders is approximately the same under both plans except for the additional $50 cash payment per $1,000 bond tendered under the compromise plan and which represents the share of these bondholders in the cash accumulations of the Missouri Pacific during the war period. For the same reasons stated in approving the treatment accorded the Cairo & Thebes bonds, we conclude and find that these allotments of cash and new securities to the holders of the Boonville bonds also represent the equitable equivalent of the value of the securities surrendered by them and that there is no residual value of the property secured by the lien of their securities.

Under the terms of the compromise plan, claims against the debtors entitled to priority over their respective mortgages, current liabilities and obligations incurred by the bankruptcy trustees during the reorganization proceeding, to the extent unpaid at the date of consummation of the plan, would be paid in cash or assumed by the reorganized company with the same relative priority as they now have with respect to other obligations of the debtor. All such claims, liabilities and obligations may be adjusted or compromised and dealt with or paid and discharged by the reorganized company in such manner as may be determined by the board of directors of the reorganized company subject to the approval of the court.

We approve all of these terms of the plan except that it should be provided that all expenses of reorganization shall be paid out of the debtor's estate and no part of them assumed by the reorganized company.

Holders of general unsecured claims against any of the debtors (other than the New Orleans and its subsidiaries and the International), which are not entitled to preference, would receive under the compromise plan for each $1,000 of principal, 10 shares of common stock, class B, and for each $1,000 of unpaid interest to January 1, 1943, a warrant to subscribe to 15 shares of new common stock, class B, at the price of $100 per share.

Holders of general unsecured claims against the New Orleans and its subsidiaries, which are not entitled to preference, would receive for each $1,000 of claim, including principal amount and unpaid interest to January 1, 1943, 10 shares of common stock, class A.

Holders of general unsecured claims against the International, which are not entitled to preference, would receive for each $1,000 of claim including principal and unpaid interest to the effective date of the plan, a warrant to subscribe to 10 shares of new common stock, class B at the price of $100 per share.

The exact amounts of such unsecured claims against each of the groups of debtors is not ascertainable at this time. As of October 4, 1943, allowed claims against the Missouri Pacific group amounted to $329,167 and, in addition, $760,048 of such claims remained to be liquidated. The amount of claims allowed against the International as of the same date was $104,495 and those not then liquidated $186,889.

Claims allowed against the New Orleans group amounted to $30,106 and unliquidated claims to $579,618. We approve the allotments of new reorganization securities as above stated to holders of general unsecured claims against the Missouri Pacific and New Orleans. We find that, in view of the rights of prior creditors and within the new capitalization which we have found justified, such allotments represent the full extent of participation in the plan of reorganization to which they are entitled. We shall hereinafter discuss the propriety of the additional issuance of stock-purchase warrants to the Missouri Pacific general unsecured creditors and of the issue of warrants to the International general unsecured creditors.

There should be included in the plan of reorganization approved herein, the following provision:

> The debtor, as reorganized, or the transferee of the property of the debtor, in connection with any settlements of transportation accounts between the United States and the debtor or the reorganized company, shall be required to recognize and pay or allow for any and all sums determined through audit, adjustment, compromise, or litigation, as due the United States by virtue of the provisions of section 322 of the Transportation Act of 1940, 54 Stat. 955, for overpayments made prior to the date of confirmation of a plan of reorganization, without requiring proof thereof in this reorganization proceeding and without prejudice by reason of such sums not having been proved herein, with the same relative priority as they now have with respect to other obligations of the debtor.

Under the terms of the compromise plan holders of Missouri Pacific preferred stock outstanding in the par amount of $70,190,100 and upon which dividends were in arrears as of January 1, 1943, in an amount over $70,000,000, and holders of the common stock outstanding in the par amount of $81,314,343, would be allotted no cash or new securities within the permissible capitalization but would receive warrants entitling them to subscribe at a price of $100 a share within a period of 10 years from date of consummation of the plan, for shares of new class-B common stock of the reorganized company. The present Missouri Pacific preferred stockholders would be entitled to subscribe for seventy-five hundredths share of such new stock for each $100, par value of preferred stock held and the present common stockholders for twenty-five hundredths share for each $100, par value, of common stock held.

A proposal to issue stock purchase warrants to these stockholders was strongly and persistently urged by the debtor and other parties prior to the issuance of the Commission plan. In our report of January 10, 1940, and supplemental report of April 9, 1940, we discussed the proposal at length and decided adversely to the debtor.

In the last 3 years the earnings of the Missouri Pacific have increased greatly as hereinbefore shown. As we have already stated, it is impossible to prophesy how long increased traffic due to the war will continue to produce large net income or to predict with any assurance the amount of such income which will be realized in the years following the war. The United States Supreme Court pointed out in the

Milwaukee case, *supra*, the unreliability in that case of the carrier's war earnings as a criterion for the indefinite future unless, as the court said, "history is to be ignored." The court referred to numerous other factors to be considered, including the great increase in taxes and in certain costs of operation and the decrease in wartime in water and truck competition. These considerations, as we have heretofore pointed out, apply also to the Missouri Pacific. Already net income of the debtor on its present capitalization is substantially less than its peak war earnings. We have fully discussed the reasons for our conviction that these recent increased earnings and the greater industrial development on the debtor's lines do not warrant an increase in either the system or Missouri Pacific capitalizations as fixed in our former report.

The debtor's director of industrial development testified at the further hearing that he could make no estimate of increased earnings which might accrue to the Missouri Pacific by reason of the recently increased industrial activity. While, in his opinion, the present "outlook for Missouri Pacific" is improved over what it was in 1939, he testified that the question "simmers down finally to the policy of Government" and that the Government "has a great stake in a great many of these industries." He pointed out that the investments are there whoever may operate the industries. The trustee of the estate of the debtor has not revised his estimate of record in this proceeding of normal year earnings available for payment of interest of about $18,200,000 for the Missouri Pacific alone, which we considered in our reports of January 10, 1940 and April 9, 1940.

In our former reports we referred to the fact that as of January 1, 1938, the indebtedness outstanding against the Missouri Pacific alone amounted to about $515,200,000 which may be compared to the permissible capitalization which we fixed for that debtor of about $463,000,000. Since then a great amount of additional interest has accrued on the debtor's obligations, a part of which has been offset by interest payments made upon order of the court and by payment of about $26,000,000 on the principal of this indebtedness.

However, this recent reduction in the amounts of the claims against the Missouri Pacific when considered in connection with the increase since 1938 in the total amounts of the claims of creditors and in light of our earlier discussion herein of the uncertainty which we believe must exist in respect of earnings for the indefinite future, does not in our opinion, afford a basis for reversing our former finding that the equities of the Missouri Pacific preferred and common stockholders are without value. We affirm that finding and our further finding that such stockholders are not entitled to participate in any allotments of reorganization securities and that it will not be necessary to submit the plan to such classes of stockholders for acceptance or rejection.

Warrants and stock escrow.—Of the warrants issuable under the compromise plan for the purchase of class B no par common stock (the junior issue), excluding warrants issuable to general unpreferred and unsecured creditors of the Missouri Pacific and International, warrants for subscription to about 494,700

shares or about 40 percent of the total of such warrants would be allotted to junior creditors of the system and to New Orleans stockholders and warrants for about 730,000 shares or about 60 percent of the total would be issued to holders of Missouri Pacific preferred and common stockholders. All warrants would be exercisable within a period of 10 years and would permit the holders to purchase the stock at $100 per share.

It is our opinion and we find that, under the circumstances of this case as disclosed by the record, some further opportunity for recoupment of their investments in the event that favorable conditions should occur in the future should be afforded the junior creditors and New Orleans stockholders. We therefore find that the allotments of warrants for the purchase of about 494,700 shares of class B common stock, as provided by the compromise plan and as shown in appendixes A and B, to be issued to junior creditors and New Orleans stockholders are equitable and should be approved. No increase in capitalization will result upon exercise of these warrants since the proceeds are to be applied to reduction of outstanding capital stock on a basis of a price of $100 a share.

Under the terms of the compromise plan, the effect of an issuance of the additional warrants to Missouri Pacific stockholders, as above stated, for subscription to about 730,000 shares of class B common stock as therein proposed, would be that the proceeds from the exercise of most of these additional warrants would be paid into the treasury of the new company to be used "for any proper corporate purpose". Thus, if

all the warrants issuable under the compromise plan were exercised the result might be a substantial increase in capitalization of the new company.

Clearly in view of the impossibility of providing for substantial satisfaction of junior system creditors in a plan formulated within a prudent capitalization which will give a reasonable assurance that new securities will be issued only to the extent that some return will be earned on all of them in years of fair prosperity, it would be inequitable to offer any rights of value to the Missouri Pacific stockholders whose equities, in light of the amount of creditors' claims outstanding, are, in our opinion, certainly without value. Any such rights, if possessing any value and if proper to offer in the reorganization, should accrue to the junior creditors and not to the Missouri Pacific stockholders. The issuance of the warrants to such stockholders would result in a dilution of the value of the warrants issuable to the creditors and, upon their exercise, would dilute the value of the class B stock issuable to the creditors in the reorganization. Their issuance might also have a material effect upon the extent of control of the new company exercisable by the different classes of claimants under the plan. It is our conclusion and we find that there should be issued in the reorganization only the amount of warrants allocable to the junior creditors and New Orleans stockholders, and that no recognition of the claims of the present Missouri Pacific stockholders, either by issuance to them of securities, warrants or otherwise can be justified in the light of the principles which must govern us in determining the capitalization of the new company and the distribution of the new securities issuable under the plan.

We have already described the escrow agreement provided by the compromise plan whereby all class B common stock issuable to creditors would be placed in escrow and would first be retired from the proceeds of the exercise of stock purchase warrants. The amount of such class B stock issuable to creditors, if assigned a value of $100 a share, is $58,466,850 in addition to which $429,900 would be issued to New Orleans stockholders. The warrants issuable in the reorganization, to the extent we have approved would result in the issue of about $49,469,900 of class B stock at an assigned value of $100 a share if the warrants are exercised. If the warrants become of value, the present junior creditors receiving any of the class B stock in the reorganization would have an opportunity by sale of their warrants to receive a price of $100 a share for the class B common stock issued to them in the reorganization, all shares of which are to be placed in escrow.

As hereinbefore modified, the provisions of the compromise plan in respect of the issuance of warrants and the establishment of the escrow agreement are approved.

Other provisions of the plan.—In reports upon other plans of reorganization we have expressed our approval of the inclusion of provisions for retirement funds similar to that proposed in the compromise plan. The operation of the fund in this case should provide early payment of part of the principal of the new general-mortgage bonds and correspondingly improve the position of the preferred and common stocks. For these and other reasons stated in previous

cases, we approve the inclusion of the provisions for a retirement fund in this instance.

We also approve the provisions, which are also to be subject to approval by the court, for a possible separate incorporation of the International properties and of the Natchez properties. The former provision is required because of the possibility, which we discussed in our report of January 10 and supplemental report of April 9, 1940, that the contract requiring the International to maintain its general offices, etc., in Palestine, Texas and which has been construed by the courts to apply to successors, may, unless a modification of the decree can be obtained, require the general system offices to be maintained at Palestine in the event of a consolidation of the International properties in the new system.

As to the Natchez properties, in view of the very small amount of property which the system would operate in the State of Mississippi if these properties were incorporated and which would consist entirely of these properties, it appears uneconomical and inadvisable to require the system to assume the tax burdens which might thereby be incurred and to subject the entire system to litigation and regulation in that State. Such a consolidation might also require the maintenance of a larger executive staff in Mississippi than if these small properties were separately incorporated.

Our approval of these provisions for possible separate incorporation of the International and Natchez companies includes approval of their proposed capitalizations, (that of the International being within the

limit of the separate permissible maximum capitalization heretofore determined by us) the terms of the proposed new separate mortgages on the properties of the International and the Austin Dam & Suburban Railway Company, the provisions for determination of available net income of the system, and any other pertinent provisions of the compromise plan.

The provision in the compromise plan for execution of the plan by the sales exclusion of certain companies, is substantially the same as that in the Commission plan, except for the omission from the list of companies affected of the properties of the International and Austin Dam & Suburban Company. In the absence of evidence at the present time of any lack of cooperation by representatives of the International bondholders in the consummation of a plan which would provide for either direct or indirect ownership and operation of the International properties by a system company, and because of the prospective usefulness of these large properties to the system, we approve their omission from the statement in the plan of those which may be sold to others than the reorganization managers.

Voting trust, board of directors, and reorganization managers.—The voting trust provided by the compromise plan would be administered by three voting trustees, one to be an outstanding citizen of Missouri, one of Texas, and the third to be chosen by the other two, all to be subject to the approval of the court. The plan does not specify how the first two members are to be nominated or selected. Several parties protest the creation of any voting trust, contending that

the stockholders should have the right to elect directors of the reorganized company and otherwise be permitted to vote their stock directly.

Under the plan approved by us herein the percentages of total voting power in the reorganized company which will accrue to present security holders upon consummation of the reorganization plan, assuming that all cash optional offers will be exercised, will be approximately the following:

Class of security		Percentage of total voting power
Missouri Pacific		
First and refunding mortgage bondholders		34.0
General-mortgage bondholders		33.0
Serial bondholders		7.0
Convertible bondholders		
Alleghany Corporation	3.4	
Other holders	14.6	18.0
Little Rock, H. S. & W. bondholders		.4
Boonville, St. L. & S. bondholders		.3
Central Branch U. P. bondholders		.3
New Orleans		
Capital stock		3
International		
First-mortgage bondholders		2.2
Adjustment-mortgage bondholders		2.5
Total		100.0

It thus appears that about 79 percent of the total voting power will be held by the Missouri Pacific first and refunding mortgage bondholders, who are senior creditors of that debtor, Missouri Pacific general-mortgage bondholders, who are junior to the first and refunding bondholders, and Missouri Pacific convertible bondholders, whose claim is wholly unsecured. Present New Orleans creditors will have no voting power and International creditors about 13 percent.

It is stated in the plan that the purpose of the voting trust is to assure a stable, experienced, and impartial management, which will be free to act in the general interest without allegiance to any particular class of security holders during the crucial period which will follow the consummation of the reorganization and the termination of the war. The voting trustees will have the power to elect the directors of the reorganized company as long as the voting trust is in effect.

In our opinion a voting trust limited in duration should be of benefit in accomplishing the desired purpose. We believe, however, that the term of the voting trust should be of the shortest possible duration required to accomplish the purpose of its creation. It is our opinion and we find that the term of the voting trust should be reduced to 5 years from the 10-year period provided for in the compromise plan. The provisions for the voting trust as stated in the compromise plan are approved, with the above modification as to its term and with the further modification that the voting trustees, instead of being designated as stated in the compromise plan, should all three be designated by the court, one of them to be a citizen of Missouri and one a citizen of Texas.

The compromise plan provides that the directors of the reorganized company shall be 15 in number, the panel of the first board of directors to be designated, 5 by the first and refunding committee, 1 by the Finance Corporation, 2 by the New Orleans committee, 2 by the International first-mortgage trustee, 2 by the general-mortgage committee and 2 by Alle-

ghany Corporation. The president of the reorganized company is to be the fifteenth director.

It will be noted from the above table of voting power in the reorganized company that, while the Missouri Pacific convertible bondholders as a whole including Alleghany Corporation will have about 22 percent of the voting power, Alleghany Corporation alone will have, as one of the holders of such bonds, only about 5.4 percent, its ownership of convertible bonds constituting its only source of control. While Alleghany Corporation also owns some of the outstanding Missouri Pacific preferred stock and about 64.3 percent of the total issue of the common stock, we have hereinbefore found that the equities of the holders of these stocks are without value and that such holders are not entitled to participation in the plan. We have further found that such stockholders are not entitled to be issued warrants for purchase of stock in the reorganized company.

In view of these facts we believe that it will be more equitable if the right to designate two of the directors of the first board of the reorganized company be not confined to one holder of the convertible bonds, but that such right of designation should be extended to a representative of all of such holders.

We find that the terms of the compromise plan with respect to the first board of directors of the reorganized company should be modified to provide that instead of their designation by Alleghany Corporation, two members of the panel shall be designated by the trustee under the indenture securing the Missouri Pacific convertible bonds. Otherwise we find that the

provisions of the compromise plan as to the first board of directors are fair and equitable and they are approved.

The compromise plan provides that the reorganization managers shall be five in number, all to be approved by the court, of whom two are to be designated by the first and refunding committee, one jointly by the New Orleans committee and the trustee of the International first mortgage, one by the Finance Corporation, and one jointly by the general-mortgage committee and Alleghany Corporation.

Alleghany Corporation owns $11,152,000 or 24.5 percent of the total of $45,498,000 convertible bonds outstanding. For the same reasons which we have given for modifying the manner of designation of the panel of the first board of directors, we find that the trustee of the Missouri Pacific convertible bond indenture should be substituted for Alleghany Corporation as to the right of designation of one reorganization manager jointly with the general-mortgage committee. Otherwise, we find that the provisions of the compromise plan with respect to the reorganization managers are fair and equitable and they are approved.

Railway Labor Executives' Association's request for inclusion of certain provisions.—The Railway Labor Executives' Association requests on brief that we include in our approved plan of reorganization certain provisions, as set forth in its brief, for the protection of the employes upon consolidation or merger of the debtors into a new company, or that we define the procedural requirements which otherwise must be followed by the representatives of the employes in obtaining such protection.

Before consummation of the plan, it will be necessary for the debtors to apply to us for authority to issue the new securities, assume obligations, transfer any property, sell, consolidate, merge or pool traffic pursuant to either the Bankruptcy Act or the Interstate Commerce Act after the plan has been confirmed by the court.

There will be included in our approved plan the following provision for protection of employes:

> As a condition of its approval of the conveyance of the properties of the debtors to the reorganized company, the Commission shall require a fair and equitable arrangement to protect the interest of the railroad employes affected, as required by law.

Other plans of reorganization.—Several outlines of proposed capital structures of the reorganized company differing from those of either the compromise plan or the Commission plan have been presented or suggested in the record of this proceeding. These other so-called plans of reorganization have been considered by us, but insofar as they differ from the plan approved by us herein they are not approved. It is unnecessary to discuss these other proposed capital structures since we have already given in full the reasons for our findings and conclusions in respect of a capital structure for the reorganized company and described the terms which we consider should be included in a plan of reorganization.

CONCLUSION

We conclude that, upon the record previously made, and upon further hearing held by us, the report and order of January 10, 1940, *supra*, as modified by the report and order of April 9, 1940, *supra*, approving a plan of reorganization for the Missouri Pacific Railroad Company, et al., debtors, pursuant to section 77 of the Bankruptcy Act, as amended, should be further modified as herein specified, and that, as thus modified, the plan will meet the requirements of section 77 (b) and (e) of that act, will be compatible with the public interest, and should be approved.

Annexed hereto as appendix E is a statement showing the distribution of reorganization securities and cash in respect of total claims and as appendix F a statement showing the distribution of cash and new securities per $1,000 bond.

An appropriate supplemental order will be entered.

Miller, Commissioner, dissenting in part:

In my opinion warrants to purchase stock should be issued also to the stockholders. However, I think that the stock to be issued should be subordinate to class B common stock and it would appear that the price should not be fixed at this time. For my views on this subject, I refer to my separate expression in F. D. No. 10992, *New York, New Haven & Hartford R. R. Co. Reorganization*, 239 I. C. C. 337, 443, decided March 22, 1940. Moreover, what I said in that expression respecting such other principles to which the majority still adheres is also applicable here.

Splawn, Commissioner, concurring:

In my separate expression upon the plan for the reorganization of the Missouri Pacific system, approved by the majority by its report of January 10 and supplemental report and order of April 9, 1940, I referred to the possibility that, if our plan then approved were assented to by the creditors of the International and its properties included in the proposed new company with the resulting extinguishment of its corporate identity as contemplated by the plan, the effect of a judgment of the Texas courts affirmed by the United States Supreme Court upholding the validity of a contract between a predecessor company of the International and the citizens of Palestine, Texas, might be to require the new company to maintain the general offices, shops, and roundhouses of the entire system at Palestine, Texas.

I further stated that it was my understanding that Palestine wishes only to be assured that the International's facilities, which it now has, be not diminished or abandoned, that is, that the general offices and shops of the International itself be maintained at Palestine.

Under the provisions of the former report the properties of the International could, if so ordered by the court, be sold to outside interests or that debtor left unreorganized and thereby excluded from the new company, in either case without making the plan inoperative. These provisions were inserted in the plan to be availed of in the event the International's creditors did not accept the plan.

By his order of July 12, 1941, approving our plan, the judge of the bankruptcy court "corrected" our

plan by adding, among others, a provision to the effect that, in the discretion of the reorganization managers, with the approval of the court, the properties of the International could be transferred to the existing International as a wholly owned subsidiary of the new Missouri Pacific company unless there should be obtained a modification of the judgment of the Texas courts which would permit the general system offices of the new company to be located and maintained outside of the State of Texas even if the International properties were merged with the properties of the other debtor companies. The substance of this provision is included in our plan as now approved and there is deleted from our plan, as now approved, the provisions of our former plan that the International properties may be sold to outside interests or the International left unreorganized, without rendering the plan inoperative, if its creditors do not assent to our plan.

There is one further matter upon which I wish to comment. In his opinion, the judge of the bankruptcy court stated:

> In the absence of some modification of the decree of the State Court in the Anderson County case, it seems imperative that either the general offices of the consolidated company must be moved to Palestine, or else the International-Great Northern must continue to be operated separately *until such time as a consolidation may be authorized under Section 5 of the Interstate Commerce Act.* (Emphasis added)

Subdivision (n) of section 77 of the Bankruptcy Act expressly provides that no reorganization effected

under that act and an order of the court or Commission in connection therewith, shall relieve any carrier from the obligation of any final judgment of any Federal or State court rendered prior to January 1, 1920, against such carrier or against one of its predecessors in title, requiring the maintenance of offices, shops and roundhouses at any place where such judgment was rendered on account of the making of a valid contract or contracts by such carrier or one of its predecessors in title.

I do not wish at this time and upon the present record to express an opinion as to whether this Commission has the power, acting in the future under the jurisdiction conferred upon it by section 5 of the Interstate Commerce Act, to nullify the judgment obtained in the Texas courts in respect of the Palestine matter although the Commission is now expressly prevented from doing so in the bankruptcy proceeding. It would seem at the least that the Commission might be reluctant, if such a separate proceeding were later instituted, to circumvent the present expressed intention of Congress that such contracts should not be nullified. Such a question, if it should arise, would be decided, of course, in the light of the circumstances as disclosed by the record which would then be made in the separate proceeding.

I wish to point out, however, that the chance of such a question arising in the future is undoubtedly affected by the provision in the plan now approved that the International may be reorganized as a wholly owned subsidiary of the new company in the event no modification of the judgment of the Texas court is obtained. Whether, after such reorganization procedure has

been followed and the system reorganization effected on that basis, any advantage would accrue from the institution of a section 5 proceeding under the Interstate Commerce Act is open to doubt. The present creditors of the International are not affected whichever method of reorganization is resorted to and the plan now approved appears to make it impossible for the International to be excluded from the system reorganization.

MISSOURI PACIFIC SYSTEM

Proposed Compromise Plan of Reorganization as of January 1, 1943
After Exercise of Cash Options Referred to in Note (D).
Note (A)

	Claims as of January 1, 1943							First Mortgage Bonds							
	Principal Amount	Unpaid Interest	Total	Cash	Claims Retired for Cash	Claims Remaining	Undisturbed	Series A 2¼%-15 yr. or Series B 3¾%-25 yrs. (J)	Series C 4% 50 year	Collateral Trust Notes 2½% 10-year (P)	General Mtg. Bonds Series A 4½% 65 year	Series B 5% 75 year	Preferred Stock 5%	A Common (at $10
Missouri Pacific														
Equipment Trusts	$ 15,755,000	$	$ 15,755,000	$	$	$ 15,755,000	$15,755,000	.....	.....	.....	.....	.....	.....	.....
Reconstruction Finance Corp. 4%	23,134,800	9,918,343	33,053,143	4,049,137 (B)	10,024,039 (B)	23,134,800	.....	$23,134,800	.....	.....	.....	.....	.....	.....
Bank Debt 4%	5,850,000	2,622,174	8,472,174	1,158,573 (B)	2,621,174 (B)	5,850,000	.....	5,850,000	.....	.....	.....	.....	.....	.....
Railroad Credit Corp. Debt 1%	2,072,317	1,786	2,074,103	2,103 (C)	2,103 (C)	2,072,000	.....	2,072,000	.....	.....	.....	.....	.....	.....
First and Refunding 5s, 1965-1981	222,190,500	88,683,990	311,873,490	15,978,260 (D)	54,798,114 (D)	257,075,376	.....	.....	.....	.....	(40%)	(15%)	(22.3%)	
											$ 61,799,000	$ 23,459,285	$ 49,584,111	
General 4s, 1975	49,339,421	19,406,940	68,746,361	.....	.....	68,746,361	.....	.....	.....	.....	.....	.....	.....	.....
Serial 5½s, 1938-1956	13,140,000	5,426,613	18,566,613	.....	.....	18,566,613	.....	.....	.....	.....	.....	.....	.....	.....
Convertible 5½s, 1949	45,493,000	25,438,189	70,931,189	.....	.....	70,931,189	.....	.....	.....	.....	.....	.....	.....	.....
St. Louis, Iron Mountain & Southern - River & Gulf 4s, 1933 (N)	24,155,600	230,053	24,385,653	230,053 (E)	230,053 (E)	24,155,600	.....	.....	(40%) 13,803,200 (L)	(30%) $ 10,252,400	.....	.....	.....	.....
Plaza-Olive Bldg. 6s, 1937-1940	591,500	.....	591,500	.....	.....	591,500	591,500 (M)	.....	.....	.....	.....	.....	.....	.....
Cairo & Thebes First 4s, 1961	1,699,000	236,533	1,935,533	169,900 (F)	169,900 (F)	1,765,633	.....	.....	(75%) 1,274,250	.....	(22.3%) 481,383	.....	.....	.....
Little Rock & Hot Springs Western First 4s, 1939	1,140,000	364,800	1,504,800	.....	.....	1,504,800	.....	.....	.....	.....	(60%) 684,000	.....	(72%) 820,800	.....
Boonville, St. Louis & Southern First 5s, 1951	333,500	92,427	325,927	11,675 (G)	11,675 (G)	314,252	.....	.....	(27.4%) 62,979	.....	.....	.....	(27.4%) 62,979	.....
Central Branch Union Pacific First 4s, 1948	1,623,000	591,507	2,219,507	97,680 (H)	97,680 (H)	2,121,827	.....	.....	(37%) 602,360	.....	(23%) 374,440	(45%) 732,600	(25.3%) 412,427	.....
Preferred stock	70,190,100	.....	70,190,100	.....	.....	70,190,100	.....	.....	.....	.....	.....	.....	.....	.....
Common stock	81,314,343	.....	81,314,343	.....	.....	81,314,343	.....	.....	.....	.....	.....	.....	.....	.....
New Orleans, Texas & Mexico														
First 4½s, 5½s, 1954-1956	40,615,900	8,675,450	49,291,350	3,437,248 (D)	5,536,312 (D)	43,755,038	.....	.....	(63%) 25,577,871 (55.1%)	.....	(44.8%) 18,177,167 (39.2%)	.....	.....	.....
Income 5s, 1935	2,354,100	147,131	2,501,231	174,651 (D)	281,315 (D)	2,219,916	.....	.....	1,297,109	.....	922,807	.....	.....	.....
Stock	959,900	.....	959,900	.....	.....	959,900	.....	.....	.....	.....	.....	.....	.....	.....
International-Great Northern														
Railroad Credit Corp. Debt 1%	416,847	856	416,703	1,703 (C)	1,703 (C)	415,000	.....	415,000	.....	.....	.....	.....	.....	.....
First 5s, 6s, 1952-1956	28,750,000	13,685,000	42,435,000	3,661,198 (D)	12,569,500 (D)	29,865,500	.....	.....	(13%) 3,455,750	.....	(52%) 15,237,800	(15%) 4,304,750	(32.3%) 6,265,500	.....
Adjustment 6s, 1952	12,807,700	10,148,660	22,956,360	.....	.....	22,956,360	.....	.....	.....	.....	.....	.....	.....	.....
Capitalization—Total	$644,730,428	$186,659,331	$831,389,759	$28,972,480	$86,238,871	$745,150,888	$16,346,500	$31,471,800	$135,237,359	$ 10,252,400	$120,670,327	$ 28,496,742	$ 57,716,817	$ 91,163,
Cumulative	.....	.....	.....	.....	.....	.....	.....	$47,818,200	$183,155,659	$193,508,059	$314,184,386	$342,681,128	$400,397,945	$491,561,

Footnotes on Sheet 2 of this Appendix A

APPENDIX A.

A ommon Stk. (at $100)	B Common Stk. (at $100)	Purchase Warrants (K)
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
(139.3%)		
68,746,261	.....	.....
(75%)	(50%)	
9,105,000	$ 6,070,000	50,874
	(100%)	
.....	45,493,000	381,578
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	526,426
.....	.....	203,286
.....	.....	.....
.....	.....	.....
(25%)	(50%)	
214,950	129,900	3,224
.....	.....	.....
.....	.....	.....
(95%)	(50%)	
13,117,515	6,903,850	59,028
$ 91,183,526	$ 58,896,750	1,224,411
$501,583,474	$560,480,224	

Notes:

(A) Percentages of claim shown are percentages of principal amounts.

Cash Offered as Follows:

(B) To R. F. C. and Banks, in settlement of portion of claim shown. R. F. C. cash is 41.48% of claim compromised, and Bank cash is 44.21% of claim compromised.

(C) To R. C. C. I. settlement of claim shown.

(D) To Missouri Pacific First and Refunding Bonds, NOT&M First Mortgage and Income Bonds, and I-GN First Mortgage Bonds, in settlement of portion of claim shown. Average rates at which existing claims are compromised for cash are as follows:

M. P. First and Refunding Bonds..... 29.16%
NOT&M First Mortgage and Income Bonds..... 62.09
I-GN First Mortgage Bonds..... 29.13

Any bondholder not wishing to accept cash as shown in compromise of part of his claim shall have the option of receiving in lieu thereof the full face amount of claims proposed to be compromised in new securities, the securities thus received to be as follows:

NOT&M First Mortgage and Income Bonds—General Mortgage Bonds, Series B
M. P. First and Refunding Bond —A Common at $88.98 per share
I-GN First Mortgage Bonds —A Common at $88.98 per share

The cash not so accepted shall be used by the Reorganization Managers to purchase and retire securities of the old or new company approximately equal in claim or face amount, respectively, to the securities received by the bondholder declining the cash option.

(E) To River and Gulf 4s, for all unpaid interest.

(F) To Cairo and Thebes First 4s, equal to five coupons.

(G) To Boonville 5s, equal to two coupons. In addition, holders of outstanding bonds shall receive a pro rata share of the net cash proceeds from the abandoned line of this railroad. As of December 31, 1942, this amounted to $59,385.

(H) To Central Branch Union Pacific 4s, equal to three coupons.

(J) Short term debt holders offered Series A bonds, with option to take Series B.

(K) Rates of issue for warrants:

MP Serials and Convertibles)
NOT&M Stock .....) 1½ per $100 of otherwise unsatisfied claim.
I-GN Adjustments .....)
MP Preferred Stock..... ¾ " " " " " "
MP Common Stock..... ¼ " " " " " "

(L) With option for First Mortgage Bonds, either Series A or Series B, whichever is not taken by R. F. C.

(M) Offered new Plaza-Olive Building First Mortgage Bonds.

(N)

Principal amount of River and Gulf 4s as of December 31, 1942.....	$34,508,000	
Less anticipated payment in cash of 30%.....	10,352,400	30%
Balance of claim to be satisfied in new securities.....	24,155,600	
New First Mortgage Bonds, Series C, offered.....	13,803,200	40%
New Collateral Trust Notes offered.....	10,352,400	30%

Percentages shown relate to principal amount as of December 31, 1942, and are also used in table above.

(P) The plan provides for the possible underwriting of the Collateral Trust Notes. If this is arranged, holders of River and Gulf 4s will have the option of accepting either the Notes, or in lieu thereof, cash for the notes at a price of not less than par, plus accrued interest.

Securities shown above do not include provision for settlement of claims of general creditors, which are as follows:

Preferred claims—to be paid in cash.

General unsecured claims:

Missouri Pacific—
—to receive for each $1,000 of principal, 10 shares of Common Stock, Class B, and for each $1,000 of unpaid interest to the effective date of the plan, a warrant to subscribe to 15 shares of new Common Stock, Class B, at the price of $100 a share.

New Orleans, Texas & Mexico—(Gulf Coast Lines)—
—to receive for each $1,000 of total claim, including principal and unpaid interest to the effective date of the plan, 10 shares of Common Stock, Class A.

International-Great Northern—
—to receive for each $1,000 of total claim, including principal and unpaid interest to the effective date of the plan, a warrant to subscribe to 10 shares of new Common Stock, Class B, at the price of $100 a share.

MISSOURI PACIFIC SYSTEM

Proposed Compromise Plan of Reorganization as of January 1, 1943
Allocation of Cash or New Securities for Each $1,000 Principal Amount of Claim or for Each $100 par value of Stock.

	—Claim as of January 1, 1943—			—Cash and Securities Offered Without Options—									—Additional Options—			
	Principal Amount or Par Value	Unpaid Interest	Total Claim	Cash	Undisturbed	Collateral Trust Notes 3½%	First Mortgage Bonds, Series C 4%	General Mortgage Bonds Series A 4½%	General Mortgage Bonds Series B 5%	Preferred Stock 5%	Common Stock at $100 a share Class A	Common Stock at $100 a share Class B	Purchase Warrants (Number of Warrants Offered)	First Mortgage Bonds Series A 2½%—15 year	First Mortgage Bonds Series B 3¾%—25 year	First Mortgage Bonds Series C 4%—50 year	B
Missouri Pacific																	
Equipments	$1,000	$...	$1,000	.....	$1,000	...	...	...	...	...	.....	.....	...	.....	.....	.....	
Reconstruction Finance Corporation Debt, 6%	1,000	423	1,423	$179.73	....	...	...	...	...	...	....	....	...	1,000	$1,000	....	
Bank Debt, 6%	1,000	448	1,448	198.07	....	...	...	...	...	...	....	....	...	1,000	1,000	....	
Railroad Credit Corporation Debt, 1%	1,000	1	1,001	1.01	....	...	...	...	...	...	....	....	...	1,000 (3)	1,000 (3)	....	
First and Refunding 5s,																	
Series A, due February 1, 1965	1,000	396	1,396	.....	....	...	$400	$330	$150	$322	.....	....	...	.....	....	....	
Series F, due March 1, 1977	1,000	392	1,392	.....	....	...	396	378	149	321	.....	....	...	.....	....	....	
Series G, due November 1, 1978	1,000	406	1,406	.....	....	...	405	383	151	324	.....	....	...	.....	....	....	
Series H, due April 1, 1980	1,000	413	1,413	.....	....	...	404	384	153	324	.....	....	...	.....	....	....	
Series I, due February 1, 1981	1,000	396	1,396	.....	....	...	400	380	150	322	.....	....	...	.....	....	....	
General 4s, due March 1, 1975	1,000	393	1,393	.....	....	...	...	...	...	...	$1,293	....	...	.....	....	....	
Serial 5¼s, due December 1, 1938-1956	1,000	539	1,539	.....	....	...	...	...	...	...	750	$ 500	4.19	.....	....	....	
Convertible 5½s, due May 1, 1949	1,000	559	1,559	.....	....	...	...	...	...	...	.....	1,000	8.39	.....	....	....	
St. Louis, Iron Mountain and Southern River & Gulf 4s, due May 1, 1933	1,000 (4)	7	1,007	306.67 (4)	....	$300 (7)	...	...	...	...	.....	.....	...	400 (2)	400 (2)	$ 400 (2)	
Plaza-Olive Building 6s, due Oct. 1, 1937-1940	1,000	...	1,000	.....	1,000 (5)	...	...	...	...	...	.....	.....	...	.....	.....	.....	
Cairo and Thebes First 4s, due March 1, 1961	1,000	133	1,133	100.00	....	...	750	283	...	...	.....	.....	...	.....	.....	.....	
Little Rock, Hot Springs & Western First 4s, due July 1, 1939	1,000	320	1,320	.....	....	...	...	600	...	720	.....	.....	...	.....	.....	.....	
Boonville, St. Louis and Southern First 5s, due August 1, 1951	1,000	396	1,396	50.00 (6)	....	...	274	...	...	274	.....	.....	...	.....	.....	.....	
Central Branch Union Pacific First 4s, due June 1, 1948	1,000	363	1,363	60.00	....	...	270	230	450	253	.....	.....	...	.....	.....	.....	
Preferred Stock	100	...	100	.....	....	...	...	...	...	...	.....	.....	.75	.....	.....	.....	
Common Stock	100	...	100	.....	....	...	...	...	...	...	.....	.....	.25	.....	.....	.....	
New Orleans, Texas & Mexico																	
First Mortgage Bonds																	
Series A, 5½%, due April 1, 1954	1,000	234	1,234	.....	....	...	640	455	...	...	.....	.....	...	.....	.....	.....	
Series B, 5%, due April 1, 1954	1,000	213	1,213	.....	....	...	629	447	...	...	.....	.....	...	.....	.....	.....	
Series C, 5%, due August 1, 1956	1,000	196	1,196	.....	....	...	621	441	...	...	.....	.....	...	.....	.....	.....	
Series D, 4½%, due August 1, 1956	1,000	176	1,176	.....	....	...	611	434	...	...	.....	.....	...	.....	.....	.....	
Income 5s, due October 1, 1935	1,000	63	1,063	.....	....	...	551	392	...	...	.....	.....	...	.....	.....	.....	
Capital Stock	100	...	100	.....	....	...	...	...	...	...	25	50	.37	.....	.....	.....	
International-Great Northern																	
Railroad Credit Corporation, Debt, 1%	1,000	2	1,002	4.10	....	...	...	...	...	...	....	....	...	1,000 (3)	1,000 (3)	....	
First Mortgage Bonds																	
Series A, 6%, due July 1, 1952	1,000	510	1,510	.....	....	...	123	542	153	244	....	....	...	.....	.....	.....	
Series B, 5%, due July 1, 1956	1,000	425	1,425	.....	....	...	116	512	145	231	....	....	...	.....	.....	.....	
Series C, 5%, due July 1, 1956	1,000	425	1,425	.....	....	...	116	512	145	231	....	....	...	.....	.....	.....	
Adjustment 6s, due July 1, 1952	1,000	735	1,735	.....	....	...	...	...	...	...	950	500	4.28	....	....	....	

(1) Under the heading "Additional Optional Offers," holder of claim may elect one but only one of the offers shown on each line.

(2) Holders of River and Gulf 4s are offered $400 in new First Mortgage Bonds, Series C, with option to take Series A or Series B, whichever is not taken by the R. F. C.

(3) Approximate figures, as claim settled in new First Mortgage Bonds is reduced to next lowest multiple of $1000 by payment of cash.

(4) It is anticipated that 30% of the principal amount of these bonds will have been paid in cash prior to January 1, 1944, and the computations of outstanding claims in Schedule B next attached give effect to this payment. The tabulation above, however, shows the original claim for principal of $1000 per bond, and the anticipated $300 payment against principal is included in the column headed "Cash."

(5) Offered new Plaza-Olive Building First Mortgage Bonds.

(6) In addition, holders of outstanding bonds shall receive a pro rata share of the net cash proceeds from the abandoned line of this railroad. As of December 31, 1942, this amounted to $254.32 per $1000 bond.

(7) The plan also provides, in Section 77, for the possible underwriting of the Collateral Trust Notes. If this is arranged, holders of River and Gulf 4s would have the option of accepting either the $300 principal amount of Collateral Trust Notes shown, or in lieu thereof, cash for the notes at a price of not less than par, plus accrued interest.

Table above does not include provision for creditors, which are as follows:

Preferred claims—to be paid in cash.

General unsecured claims:

Missouri Pacific—
to receive for each $1000 of princip... Class B; and for each $1000 of unpa... the plan, a warrant to subscribe to ... Class B, at the price of $100 a share.

New Orleans, Texas & Mexico (Gulf Co...
to receive for each $1000 of total cla... interest to the effective date of the ... Class A.

International-Great Northern—
to receive for each $1000 of total cla... interest to the effective date of the ... shares of new Common Stock, Class

APPENDIX B.

...l Optional Offers (Note 1)——

...es C ...— ...year	General Mortgage Bonds, Series B 5%	Common Stock Class A at $100 a share	Cash
...	...	...	.....
...	...	...	.....
...	...	...	.....
...	...	...	.....
...	...	$374	$ 71.10
...	...	376	71.48
...	...	378	72.12
...	...	379	72.46
...	...	374	71.10
...	...	...	.....
...	...	...	.....
...	...	...	.....
400 (2)		...	.....
...	...	...	.....
...	...	...	.....
...	...	...	.....
...	...	...	.....
...	...	...	.....
...	...	...	.....
...	...	...	.....
...	...	...	.....
...	$139	...	86.14
...	137	...	84.75
...	134	...	83.09
...	131	...	81.49
...	120	...	74.19
...	...	...	.....
...	...	...	.....
...	...	503	130.49
...	...	473	122.63
...	...	473	122.63
...	...	...	.....

...ision for settlement of claims of general

...ash.

...f principal, 10 shares of Common Stock, ...of unpaid interest to the effective date of ...cribe to 15 shares of new Common Stock, ...a share.

...(Gulf Coast Lines)—

...total claim, including principal and unpaid ...of the plan, 10 shares of Common Stock,

...total claim, including principal and unpaid ...of the plan, a warrant to subscribe to 10 ...k, Class B, at the price of $100 a share.

Commission Plan—Effective Date, January 1, 1940

(Plan Formerly Approved by the Commission)

(Percentages shown are percentages of total amounts of claims)

	Amount of claim	Cash payment	Undisturbed	First-mortgage bonds: Series A 3¾-percent [1]	First-mortgage bonds: Series B 4-percent	10-year collateral-trust 3½-percent notes [1]	General-mortgage bonds: Series A cumulative income 4-percent [1]	General-mortgage bonds: Series B convertible income 4½-percent [1]	Prior-preferred $100 par value 5-percent stock [1]	Second-preferred $5 dividend no-par-value stock [1] at $100 a share
Missouri Pacific R. R. Co.										
Equipment-trust certificates	$ 13,000,000	.....	$13,000,000	.....	.....	.....	.....	.....	.....	.....
Pacific R. R. Co. of Mo. first 4's, 1938:										
Principal	6,996,000	$ 116,600	.....	.....	.....	$ 6,996,000	.....	.....	.....	.....
Interest	116,600	(1.6%)				(98.4%)				
Pacific R. R. Co. of Mo. Carondelet Branch first 4½'s, 1938:										
Principal	237,500	2,672	.....	.....	.....	237,500	.....	.....	.....	.....
Interest	2,672	(1.1%)				(98.9%)				
Pacific R. R. Co. of Mo. second 5's:										
Principal	2,573,000	.....	.....	.....	.....	2,573,000 (100%)	.....	.....	.....	.....
Mo. Pac. Ry. Co. third 4's:										
Principal	3,828,000	25,520	.....	.....	.....	3,828,000	.....	.....	.....	.....
Interest	25,520	(0.7%)				(99.3%)				
Pacific R. R. Co. of Mo. real-estate 5's:										
Principal	799,000	6,658	.....	.....	.....	799,000	.....	.....	.....	.....
Interest	6,658	(0.8%)				(99.2%)				
Reconstruction Finance Corp. loan, 6%:										
Principal	23,134,800	317,650	.....	$23,135,000	.....	.....	.....	$ 2,859,000	.....	$ 5,453,...
Interest	8,630,275	(1%)		(72.8%)				(9%)		(17.2...
Bank debt:										
Principal	5,850,000	81,100	.....	5,850,000	.....	.....	.....	731,000	.....	1,452,...
Interest	2,264,212	(1.0%)		(72.1%)				(9%)		(17.9...
Railroad Credit Corp. debt 1% (estimated):										
Principal	2,331,579	.....	.....	2,357,000	.....	.....	.....	.....	.....	.....
Interest	25,527			(100%)						
First and refunding mortgage 5% bonds, 1965-81:										
Principal	223,190,500	1,511,000	.....	.....	$ 66,957,000	.....	.....	78,117,000	$ 33,479,000	55,798,...
Interest	71,943,703	(0.5%)			(22.7%)			(26.5%)	(11.3%)	(18.9...
General-mortgage, 4% bonds, 1975:										
Principal	$ 49,339,421	.....	.....	.....	.....	.....	.....	.....	.....	.....
Interest	13,486,109									
Serial 5¼% bonds, 1933-56:										
Principal	12,140,000	.....	.....	.....	.....	.....	.....	.....	.....	.....
Interest	4,514,563									
Convertible 5½% bonds, 1949:										
Principal	45,493,000	.....	.....	.....	.....	.....	.....	.....	.....	.....
Interest	17,931,824									
St. Louis, I. M. & S. R. & Gulf Divisions 4% bonds, 1933:										
Principal	34,508,000	$ 230,053	.....	.....	$ 34,508,000	.....	.....	.....	.....	.....
Interest	230,053	(0.7%)			(99.3%)					
Plaza-Olive Bldg. 6's, 1937-40:										
Principal	$ 711,500	.....	.....	.....	.....	.....	.....	.....	.....	.....
Interest	52,725									
Cairo & Thebes first 4's, 1961:										
Principal	1,699,000	22,653	.....	.....	1,274,000	.....	.....	$ 425,000	.....	.....
Interest	22,653	(1.3%)			(74%)			(24.7%)		
Little Rock & H. S. W. first 4's, 1939:										
Principal	[4] 1,140,000	.....	.....	.....	.....	.....	.....	.....	$ 686,500	$ 228...
Interest	228,000								(50.2%)	(16....
Boonville, St. L. & So. first 5's, 1951:										
Principal	233,500	.....	.....	.....	64,000	.....	.....	.....	.....	64...
Interest	57,402				(22%)					(2...
Central Br. U. P. first 4's, 1948:										
Principal	1,628,000	.....	.....	.....	440,000	.....	$ 534,000	.....	768,000	282...
Interest	396,147				(21.7%)		(26.4%)		(38%)	(13....
Preferred stock	70,190,100	.....	.....	.....	.....	.....	.....	.....	.....	.....
Common stock	81,314,343	.....	.....	.....	.....	.....	.....	.....	.....	.....

...Texas & M. Ry. Co.

Commission Plan—Effective Date, January 1, 1940

(Plan Formerly Approved by the Commission)

(Percentages shown are percentages of total amounts of claims)

	Amount of claim	Cash payment	Undisturbed	First-mortgage bonds: Series A 3¾-percent [1]	First-mortgage bonds: Series B 4-percent	10-year collateral-trust 3½-percent notes [1]	General-mortgage bonds: Series A cumulative income 4-percent [1]	General-mortgage bonds: Series B convertible income 4½-percent [1]	Prior-preferred $100 par value 6-percent stock [1]	Second-preferred $5 dividend no-par-value stock [1] at $100 a share	No-par common stock (Shares)
Missouri Pacific R. R. Co.											
Equipment-trust certificates	$ 12,000,000	.....	$12,000,000	.....	.....	.....	.....	.....	.....	.....	.....
Pacific R. R. Co. of Mo. first 4's, 1938:											
Principal	6,996,000	$ 116,600 (1.6%)	.....	.....	.....	$ 6,996,000 (98.4%)	.....	.....	.....	.....	.....
Interest	116,600										
Pacific R. R. Co. of Mo. Carondelet Branch first 4½'s, 1938:											
Principal	237,500	2,672 (1.1%)	.....	.....	.....	237,500 (98.9%)	.....	.....	.....	.....	.....
Interest	2,672										
Pacific R. R. Co. of Mo. second 5's:											
Principal	2,573,000	.....	.....	.....	.....	2,573,000 (100%)	.....	.....	.....	.....	.....
Mo. Pac. Ry. Co. third 4's:											
Principal	3,828,000	25,520 (0.7%)	.....	.....	.....	3,828,000 (99.3%)	.....	.....	.....	.....	.....
Interest	25,520										
Pacific R. R. Co. of Mo. real-estate 5's:											
Principal	799,000	6,658 (0.8%)	.....	.....	.....	799,000 (99.2%)	.....	.....	.....	.....	.....
Interest	6,658										
Reconstruction Finance Corp. loan, 6%:											
Principal	23,134,800	317,650 (1%)	.....	$23,135,000 (72.8%)	.....	.....	.....	$ 2,859,000 (9%)	.....	$ 5,453,500 (17.2%)	.....
Interest	8,630,275										
Bank debt:											
Principal	5,850,000	81,100 (1.0%)	.....	5,850,000 (72.1%)	.....	.....	.....	731,000 (9%)	.....	1,452,000 (17.9%)	.....
Interest	2,264,212										
Railroad Credit Corp. debt 1% (estimated):											
Principal	2,331,579	.....	.....	2,357,000 (100%)	.....	.....	.....	.....	.....	.....	.....
Interest	25,527										
First and refunding mortgage 5% bonds, 1965-81:											
Principal	223,190,500	1,511,000 (0.5%)	.....	.....	$ 66,957,000 (22.7%)	.....	.....	78,117,000 (26.5%)	$ 33,479,000 (11.3%)	55,798,000 (18.9%)	2a 666,152 (30.1%)
Interest	71,943,703										
General-mortgage, 4% bonds, 1975:											
Principal	$ 49,339,421	.....	.....	.....	.....	.....	.....	.....	.....	.....	2b 369,519
Interest	13,486,109										
Serial 5¼% bonds, 1933-56:											
Principal	12,140,000	.....	.....	.....	.....	.....	.....	.....	.....	.....	2c 48,197
Interest	4,514,563										
Convertible 5½% bonds, 1949:											
Principal	45,493,000	.....	.....	.....	.....	.....	.....	.....	.....	.....	2d 110,093
Interest	17,931,824										
St. Louis, I. M. & S. R. & Gulf Divisions 4% bonds, 1933:											
Principal	34,508,000	$ 230,053 (0.7%)	.....	.....	$ 34,508,000 (99.3%)	.....	.....	.....	.....	.....	.....
Interest	230,053										
Plaza-Olive Bldg. 6's, 1937-40:											
Principal	[3] 711,500	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Interest	52,725										
Cairo & Thebes first 4's, 1961:											
Principal	1,699,000	22,653 (1.3%)	.....	.....	1,274,000 (74%)	.....	.....	$ 425,000 (24.7%)	.....	.....	.....
Interest	22,653										
Little Rock & H. S. W. first 4's, 1939:											
Principal	[4] 1,140,000	.....	.....	.....	.....	.....	.....	.....	$ 686,500 (50.2%)	$ 228,000 (16.7%)	.....
Interest	228,000										
Boonville, St. L. & So. first 5's, 1951:											
Principal	233,500	.....	.....	.....	64,000 (22%)	.....	.....	.....	.....	64,000 (22%)	.....
Interest	57,402										
Central Br. U. P. first 4's, 1948:											
Principal	1,628,000	.....	.....	.....	440,000 (21.7%)	.....	$ 534,000 (26.4%)	.....	768,000 (38%)	282,000 (13.9%)	.....
Interest	396,147										
Preferred stock	70,190,100	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Common stock	81,314,343	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
New Orleans, Texas & M. Ry. Co.											
Equipment-trust certificates	236,000	.....	$ 236,000	.....	.....	.....	.....	.....	.....	.....	.....
First-mortgage bonds 4½'s-5½'s, 1954-56:											
Principal	40,615,900	446,000 (0.9%)	.....	.....	22,536,000 (46.7%)	.....	10,204,000 (21.2%)	8,173,000 (16.9%)	.....	6,892,000 (14.3%)	.....
Interest	[5] 7,635,377										
Income bonds 5%, 1935:											
Principal	2,354,100	7,000 (0.3%)	.....	.....	1,142,000 (46.8%)	.....	518,000 (21.2%)	412,000 (16.9%)	.....	363,000 (14.8%)	.....
Interest	[5] 88,279										
Stock	859,800										

Central Br. U. P. first 4's, 1948:											
Principal	1,628,000	.....	.....	.....	440,000	.....	$ 534,000	.....	768,000	282,000	.....
Interest	396,147				(21.7%)		(26.4%)		(38%)	(13.9%)	
Preferred stock	70,190,100	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Common stock	81,314,242	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
New Orleans, Texas & M. Ry. Co.											
Equipment-trust certificates	236,000	.....	$ 236,000	.....	.....	.....	.....	.....	.....	.....	.....
First-mortgage bonds 4½'s-5½'s, 1954-56:											
Principal	40,615,900	446,000	.....	.....	22,536,000	.....	10,204,000	8,173,000	.....	5,292,000	.....
Interest	[5] 7,635,377	(0.9%)			(46.7%)		(21.2%)	(16.9%)		(14.3%)	
Income bonds 5%, 1935:											
Principal	2,354,100	7,000	.....	.....	1,142,000	.....	518,000	412,000	.....	363,000	.....
Interest	[5] 88,279	(0.3%)			(46.8%)		(21.2%)	(16.9%)		(14.8%)	
Stock	859,500	.....	.....	.....	.....	.....	.....	.....	.....	.....	[2e] 1,138
International-Great Northern R. R. Co.											
Equipment-trust certificates	479,000	.....	479,000	.....	.....	.....	.....	.....	.....	.....	.....
Railroad Credit Corp. debt, 1% (estimated):											
Principal	432,971	.....	.....	$ 437,500	.....	.....	.....	.....	.....	.....	.....
Interest	4,512			(100%)							
First-mortgage bonds, 5%-6%, 1952-56:											
Principal	28,750,000	.....	.....	.....	.....	.....	11,471,000	7,217,000	4,256,000	5,779,000	[2f] 100,895
Interest	10,602,500						(29.5%)	(18.6%)	(11%)	(14.9%)	(26%)
Adjustment-mortgage bonds, 6%, 1952:											
Principal	13,807,700	.....	.....	.....	.....	.....	.....	.....	.....	.....	[2g] 71,570
Interest	7,663,274										
Total capitalization	.....	2,766,906	13,715,000	31,779,500	126,921,000	$ 14,433,500	22,727,000	97,934,000	39,189,500	76,311,500	1,387,564
Cumulative total	.....	.....	.....	45,494,500	[6] 173,127,000	187,560,500	210,287,500	308,221,500	347,411,000	423,722,500	[7]

[1] Figures are given to nearest 500.
[2a] Taken at $88.98 a share.
[2b] Taken at $170 a share.
[2c] Taken at $345.55 a share.
[2d] Taken at $576.10 a share.
[2e] Taken at $755.54 a share.
[2f] Taken at $100 a share.
[2g] Taken at $300 a share.
[3] Holders of Plaza-Olive Bldg. first-mortgage bonds to receive in satisfaction of the principal amount of their claim, $711,500 of new Plaza-Olive Bldg. first-mortgage bonds.
[4] Holders of Little Rock & Hot Springs Western first-mortgage bonds also to receive $453,600 of Rock Island, Arkansas & Louisiana-Little Rock & Hot Springs Western 4-percent notes to be deposited with mortgage trustee.
[5] Unpaid interest shown assumes payment of two coupons in 1940 on N. O. T. & M. bonds. If such payments are not made, the amount of second-preferred stock will be correspondingly increased. Any additional payments of interest before consummation of plan will correspondingly reduce amounts of second-preferred stock.
[6] Including $711,500 of new Plaza-Olive Bldg. first-mortgage bonds.
[7] Total capitalization stating a value of $100 a share for common stock, $560,478,900; does not include provision for claims of general unsecured creditors of Missouri Pacific R. R. Co. and New Orleans, T. & M. Ry. Co., who will receive, when not preferred, 2.42 shares of new common stock for each $1,000, principal amount, of their allowed claims.

NOTES

1. Under the heading "Additional Optional Offers," holder of claim may elect one, but only one of the offers shown on each line.

2. Approximate figures, as claim settled in new first mortgage bonds is reduced to next lowest multiple of $1,000 by payment of cash.

3. Holders of St. L., I. M. & So. River & Gulf 4's are offered $400 in new first mortgage bonds, series C, with option to take series A or series B, whichever is not taken by the R. F. C.

4.

Principal amount of St. L., I. M. & So. River & Gulf 4's as of 1-1-43		$34,508,000
Less payment in cash of 30% (Court Order No. 2373 dated 9-18-43)		10,352,400
Balance of claim to be satisfied in new securities		24,155,600
New first mortgage bonds, series C offered	40%	13,803,200
New collateral trust notes offered	30%	10,352,400

5. Offered new Plaza-Olive Building first mortgage bonds.

6. In addition, holders of outstanding bonds shall receive a pro rata share of the net cash proceeds from the abandoned line of this railroad. As of 12-31-42, this amounted to $254.32 per $1,000 bond.

7. The plan also provides for the possible underwriting of the collateral trust notes. If this is arranged, holders of River and Gulf 4's would have the option of either accepting the $300 principal amount of collateral trust notes shown, or in lieu thereof, cash for the notes at a price of not less than par, plus accrued interest.

8. Table above does not include provision for settlement of claims of general creditors, which are as follows:

Preferred claims—to be paid in cash.

General unsecured claims:

Missouri Pacific—
to receive for each $1,000 of principal, 10 shares of common stock, class B; and for each $1,000 of unpaid interest to the effective date of the plan, a warrant to subscribe to 15 shares of new common stock, class B, at the price of $100 a share.

New Orleans, Texas & Mexico (Gulf Coast Lines)—
to receive for each $1,000 of total claim, including principal and unpaid interest to the effective date of the plan, 10 shares of common stock, class A.

International-Great Northern—
to receive for each $1,000 of total claim, including principal and unpaid interest to the effective date of the plan, a warrant to subscribe to 10 shares of new common stock, class B, at the price of $100 a share.

MISSOURI PACIFIC RAILROAD COMPANY REORGANIZATION

Distribution of Cash and of System Mortgage Bonds and Stock Provided for in Commission Plan

(Plan Formerly Approved by the Commission)

The holders of bonds of the classes stated below shall receive for each $1,000 bond and all unpaid interest thereon as of January 1, 1940, approximately the following amounts of cash and new securities:

Outstanding issue	Class of present security designated in court's order of classification	Cash payment	First Mortgage Bonds Series A 3¾ percent	First Mortgage Bonds Series B 4 percent	10 year collateral trust 3½ percent notes	General Mortgage Bonds Series A Cumulative income 4 percent	General Mortgage Bonds Series B Convertible income 4½ percent	Prior-preferred $100 par value 5 percent stock	Second preferred $5 dividend no-par value stock	No-par common stock	New Plaza-Olive Bldg. first mortgage bonds
Pacific R. R. Co. of Mo. first 4's, 1938	11 (a)	$ 17	....	.....	$ 1,000	....	....	....	....	....	.....
Pacific R. R. Co. of Mo. Carondelet Branch first 4½'s, 1938	11 (d)	11	....	.....	1,000	....	....	....	....	....	.....
Pacific R. R. Co. of Mo. second 5's, 1938	11 (b)	....	....	.....	1,000	....	....	....	....	....	.....
Mo. Pac. Ry. third 4's, 1938	11 (c)	7	....	.....	1,000	....	....	....	....	....	.....
Pacific R. R. Co. of Mo. real-estate 5's, 1938	11 (c)	8	....	.....	1,000	....	....	....	....	....	.....
Mo. Pac. first and refunding mortgage 5's, 1965-81	17	7	....	$ 300	.....	....	$350	$150	2.5 shrs.	2.98 shrs.	.....
Mo. Pac. general-mortgage 4's, 1975	18	....	....	.....	.....	....	....	....	....	7.49	.....
Mo. Pac. secured serial 5½'s, 1933-56	19	....	....	.....	.....	....	....	....	....	3.97	.....
Mo. Pac. 20 year convertible 5½'s, 1949	4 (b)	....	....	.....	.....	....	....	....	....	2.42	.....
St. L. I. M. & S. River & Gulf Divisions 4's, 1933	12	7	....	1,000	.....	....	....	....	....	....	.....
Plaza-Olive Bldg. first mortgage 6's, 1937-40	20	....	....	.....	.....	....	....	....	....	....	$ 1,000
Cairo & Thebes first-mortgage 4's, 1961	16	13	....	750	.....	....	250	....	....	....	.....
[1] Boonville, St. L. & So. first-mortgage 5's, 1951	15	....	....	274	.....	....	....	....	2.74	....	.....
Central Br. U. P. first mortgage 4's, 1948	14	....	....	270	.....	828	....	472	1.72	....	.....
[2] Little Rock & H. S. Wn. first 4's, 1939	13	....	....	.....	.....	....	....	602	2.00	....	.....
N. O. T. & M. Ry. Co. first mortgage 4½'s-5½'s, 1954-56	21 (a)	11 (ave.)	....	555 (ave.)	.....	251 (ave.)	201 (ave.)	....	1.70 (ave.)	....	.....
N. O. T. & M. Ry. Co. income 5's, 1935	21 (b)	3	....	485	.....	220	175	....	1.54	....	.....
L. G. N. R. R. Co. first mortgage 5's, 6's, 1952-56	22	....	....	.....	.....	399 (ave.)	351 (ave.)	148 (ave.)	2.01 (ave.)	3.51 (ave.)	.....
L. G. N. R. R. Co. adjustment mortgage 6's, 1952	23	....	....	.....	.....	....	....	....	....	5.18	.....

[1] Holders of these bonds shall also receive distributable share of net cash proceeds of salvage from the abandoned line of this railroad.

[2] In addition to the distribution shown the trustee under the mortgage securing these bonds, will receive, in consideration for releasing the Benton-Hot Springs section of the railroad, $453,800, principal amount, of notes of the Rock Island, Ark. & La. R. R. Co. which notes are guaranteed by the Chicago, Rock Island & Pacific Ry. Co.

Note: Holders of N. O. T. & M. Ry. Co. capital stock shall receive for each share thereof, approximately 0.132 share of new no-par-value common stock.

MISSOURI PACIFIC RAILROAD COMPANY

Distribution of Reorganization Securities and Cash in Supplemental Plan Effective January 1, 1943, Aproved by the Commission.
(After Exercise of Cash Options.)

Claims as of Jan. 1, 1943		Principal and Unpaid Interest to Jan. 1, 1943	Cash Payments	Claims Retired for Cash	Claims Remaining	Undisturbed	—First Mortgage Bonds— Series A 2½% 15-yr. or Ser. B 3¾% 25-yrs. (f)	Series C 4% 50-yrs.	Collateral Trust Notes 3½% 10-yrs.	—Gen. Mortgage— Ser. A 4½% 65-yrs.	Ser. B 5% 75-yrs.	Pref. Stock 5%	A Common Stock (at $100)	B Common Stock (at $100)
Missouri Pacific R. R. Co.														
Equipment trusts		$ 15,755,000	.....	.....	$ 15,755,000	$15,755,000	.....	.....	.....	.....	.....	.....	.....	.....
Reconstruction Finance Corp. 6%	Prin.	23,134,800)	.....	.....	23,134,800	.....	$ 23,134,800	.....	.....	.....	.....	.....	.....	.....
	Int.	9,918,343)	$ 5,329,242 (a)	$ 9,918,343 (a)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bank debt 6%:	Prin.	5,850,000)	.....	.....	5,850,000	.....	5,850,000	.....	.....	.....	.....	.....	.....	.....
	Int.	2,622,174)	1,480,382 (a)	2,622,174 (a)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Railroad Credit Corp. 1%	Prin.	2,072,317)	2,103	2,103	2,072,000	.....	2,072,000	.....	.....	.....	.....	.....	.....	.....
	Int.	1,786)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
First and refunding mtg. 5% bonds—1965-81	Prin.	223,190,500)	15,978,260 (b)	54,798,114 (b)	257,075,376 (b)	.....	.....	$ 89,282,840	.....	$ 84,799,080	$ 23,459,295	$ 49,554,111	.....	.....
	Int.	88,682,990)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
General mtg. 4% bonds, 1975	Prin.	49,339,421)	.....	.....	68,746,261	.....	.....	.....	.....	.....	.....	.....	$ 68,746,261	.....
	Int.	19,406,840)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Serial 5¼% bonds 1933-56	Prin.	12,140,000)	.....	.....	18,566,613	.....	.....	.....	.....	.....	.....	.....	9,105,000	$ 6,979,800
	Int.	6,426,613)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Convertible 5½% bonds 1949	Prin.	45,493,000)	.....	.....	70,931,169	.....	.....	.....	.....	.....	.....	.....	.....	45,493,000
	Int.	25,438,169)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
St. Louis, I. M. & S. R. Gulf Division 4% bonds, 1933	Prin.	24,155,600) (i)	.....	.....	24,155,600	.....	.....	13,803,200 (h)	10,352,400	.....	.....	.....	.....	.....
	Int.	230,053)	230,053	230,053	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Plaza-Olive Bldg. 6's	Prin.	591,500	.....	.....	591,500	591,500 (j)	.....	.....	.....	.....	.....	.....	.....	.....
Cairo-Thebes first 4's	Prin.	1,699,000)	169,900 (c)	169,900 (c)	1,755,633	.....	.....	1,274,250	.....	481,383	.....	.....	.....	.....
	Int.	226,533)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Little Rock & H. S. W. 4's, 1939	Prin.	1,140,000)	.....	.....	1,504,800	.....	.....	.....	.....	684,000	.....	820,800	.....	.....
	Int.	364,800)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Boonville, St. L. & So. 5's, 1951	Prin.	233,500)	11,675 (d)	11,675 (d)	314,252	.....	.....	63,979	.....	.....	.....	63,979	.....	.....
	Int.	92,427)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Central Branch Union Pacific first 4's	Prin.	1,628,000)	97,680 (e)	97,680 (e)	2,121,827	.....	.....	602,360	.....	374,440	732,600	412,427	.....	.....
	Int.	591,507)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Claims of general creditors			To receive treatment as shown in footnote (1)											
Preferred stock	Prin.	70,190,100	.....	.....	70,190,100	(Preferred stockholders will neither participate in the plan nor receive warrants)								
Common stock	Prin.	81,314,343	.....	.....	81,314,343	(Common " " " " " " " " " " ")								
New Orleans, Tex. & M. Ry. Co.														
First 4½'s-5½'s 1954-1956	Prin.	40,615,900)	3,437,348	5,536,312	43,755,038	.....	.....	25,577,971	.....	18,177,167	.....	.....	.....	.....
	Int.	8,675,450)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Income 5's, 1935	Prin.	2,354,100)	174,651	251,315	2,319,916	.....	.....	1,297,109	.....	922,807	.....	.....	.....	.....
	Int.	147,131)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Claims of general creditors			To receive treatment as shown in footnote (1)											
Stock	Prin.	859,800	.....	.....	859,800	.....	.....	.....	.....	.....	.....	.....	214,950	429,900
International-Great Nor. R. R. Co.														
Railroad Credit Corp. 1%	Prin.	415,847)	1,703	1,703	415,000	.....	415,000	.....	.....	.....	.....	.....	.....	.....
	Int.	856)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
First mortgage bonds 5%-6%, 1952-56	Prin.	28,750,000)	3,661,198	12,569,500	29,865,500	.....	.....	3,455,750	.....	15,237,500	4,306,750	6,865,500	.....	.....
	Int.	13,685,000)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Adjustment mortgage 6% bonds, 1952	Prin.	13,807,700)	.....	.....	23,956,360	.....	.....	.....	.....	.....	.....	.....	13,117,315	6,903,850
	Int.	10,148,660)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Claims of general creditors			To receive treatment as shown in footnote (1)											
Capitalization—Total		$831,389,759	$30,574,095	$86,238,871	$745,150,888	$16,346,500	$ 31,471,800	$135,337,359	$ 10,352,400	$120,676,327	$ 38,498,745	$ 57,716,817	$ 91,183,536	$ 58,896,750
Cumulative		.....	.....	.....	.....	.....	47,318,300	183,155,659	193,508,059	314,184,386	352,683,131	410,399,948	501,583,474	560,480,224

MISSOURI PACIFIC RAILROAD COMPANY

Distribution of Reorganization Securities and Cash in Supplemental Plan Effective January 1, 1943, Aproved by the Commission.
(After Exercise of Cash Options.)

		Principal and Unpaid Interest to Jan. 1, 1943	Cash Payments	Claims Retired for Cash	Claims Remaining	Undisturbed	—First Mortgage Bonds— Series A 3½% 15-yr. or Ser. B 3¾% 25-yrs. (f)	Series C 4% 50-yrs.	Collateral Trust Notes 3½% 10-yrs.	—Gen. Mortgage— Ser. A 4½% 65-yrs.	Ser. B 5% 75-yrs.	Pref. Stock 5%	A Common Stock (at $100)	B Common Stock (at $100)	No. shs. B Comm. Stock subj. to purchase warrants (g)
1, 1943															
. R. Co.															
		$ 15,755,000	.....	.....	$ 15,755,000	$15,755,000	.....	.....	.....	.....	.....	.....	.....	.....	.....
nance	Prin.	23,134,800)	.....	.....	23,134,800	.....	$ 23,134,800	.....	.....	.....	.....	.....	.....	.....	.....
	Int.	9,918,342)	$ 5,329,342 (a)	$ 9,918,342 (a)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Prin.	5,850,000)	.....	.....	5,850,000	.....	5,850,000	.....	.....	.....	.....	.....	.....	.....	.....
	Int.	2,622,174)	1,480,382 (a)	2,622,174 (a)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Prin.	2,072,317)	2,103	2,103	2,072,000	.....	2,072,000	.....	.....	.....	.....	.....	.....	.....	.....
	Int.	1,786)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
g mtg.	Prin.	233,190,500)	15,978,260 (b)	54,798,114 (b)	257,075,376 (b)	.....	.....	$ 89,262,840	.....	$ 84,799,030	$ 23,459,395	$ 49,554,111	.....	.....	.....
-81	Int.	88,682,990)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Prin.	49,239,421)	.....	.....	63,746,261	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Int.	19,406,840)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$ 63,746,261	.....	.....
	Prin.	[illegible])	.....	.....	18,566,613	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Int.	[illegible])	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	9,105,000	$ 6,070,000	60,784
bonds	Prin.	45,493,000)	.....	.....	70,931,169	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Int.	25,438,169)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	45,492,000	381,573
R. Gulf	Prin.	24,155,600) (i)	.....	.....	24,155,600	.....	.....	13,803,200 (h)	10,352,400	.....	.....	.....	.....	.....	.....
ds, 1933	Int.	230,053)	230,053	230,053	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
's	Prin.	591,500	.....	.....	591,500	591,500 (j)	.....	.....	.....	.....	.....	.....	.....	.....	.....
4's	Prin.	1,699,000)	169,900 (c)	169,900 (c)	1,755,533	.....	.....	1,274,350	.....	481,383	.....	.....	.....	.....	.....
	Int.	226,533)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
B. W.	Prin.	1,140,000)	.....	.....	1,504,800	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Int.	364,800)	.....	.....	.....	.....	.....	.....	.....	684,000	.....	820,800	.....	.....	.....
So.	Prin.	233,500)	11,675 (d)	11,675 (d)	314,252	.....	.....	63,979	.....	.....	.....	.....	.....	.....	.....
	Int.	92,427)	.....	.....	.....	.....	.....	.....	.....	.....	.....	63,979	.....	.....	.....
nion	Prin.	1,628,000)	97,680 (e)	97,680 (e)	2,121,827	.....	.....	602,360	.....	374,440	732,600	412,427	.....	.....	.....
	Int.	591,507)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
creditors			To receive treatment as shown in footnote (1)												
	Prin.	70,190,100	.....	.....	70,190,100	(Preferred stockholders will neither participate in the plan nor receive warrants)									
	Prin.	81,314,343	.....	.....	81,314,343	(Common " " " " " " " " " " ")									
& M. Ry. Co.															
	Prin.	40,615,900)	3,437,248	5,536,312	43,755,038	.....	.....	25,577,871	.....	18,177,167	.....	.....	.....	.....	.....
	Int.	8,675,450)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Prin.	2,354,100)	174,651	281,315	2,219,916	.....	.....	1,297,109	.....	922,807	.....	.....	.....	.....	.....
	Int.	147,131)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
creditors			To receive treatment as shown in footnote (1)												
	Prin.	859,800	.....	.....	859,800	.....	.....	.....	.....	.....	.....	.....	214,950	429,900	3,224
Nor. R. R. Co.															
rp. 1%	Prin.	415,847)	1,703	1,703	415,000	.....	415,000	.....	.....	.....	.....	.....	.....	.....	.....
	Int.	856)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
nds	Prin.	28,750,000)	3,561,198	12,569,500	29,865,500	.....	.....	3,455,750	.....	15,237,500	4,306,750	6,865,500	.....	.....	.....
	Int.	13,685,000)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
ge 6%	Prin.	13,807,700)	.....	.....	23,956,360	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Int.	10,148,660)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	13,117,315	6,903,850	59,038
creditors			To receive treatment as shown in footnote (1)												
tal		$831,389,759	$30,574,095	$86,238,871	$745,150,888	$16,346,500	$ 31,471,800	$135,337,359	$ 10,352,400	$120,676,327	$ 28,498,745	$ 57,716,817	$ 91,183,526	$ 58,896,750	494,699
mulative		.....	.....	.....	.....	.....	47,818,300	183,155,659	193,508,059	314,184,386	342,683,131	410,399,948	501,583,474	560,480,224	.....

NOTES

(a) Compromise settlement provides for payment in cash of unpaid interest at 6 percent to date of bankruptcy and 4 percent thereafter.

(b) To Missouri Pacific first and refunding bonds, NOT&M first mortgage and income bonds, and I-GN first mortgage bonds, in settlement of portion of claim shown. Average rates at which existing claims are compromised for cash are as follows:

M. P. first and refunding bonds	29.16%
NOT&M first mortgage and income bonds	62.09
I-GN first mortgage bonds	29.13

Any bondholder not wishing to accept cash as shown in compromise of part of his claim shall have the option of receiving in lieu thereof the full face amount of claims proposed to be compromised in new securities, the securities thus received to be as follows:

NOT&M first mortgage and income bonds	gen. mort. bonds, Series B
MP first and refunding bonds	A common stock at $88.98 per sh.
I-GN first mortgage bonds	A " " " $8.98 " "

The cash not so accepted shall be used by the reorganization managers to purchase and retire securities of the old or new company approximately equal in claim or face amount, respectively, to the securities received by the bondholder declining the cash option.

(c) Equal to five coupons.

(d) To Boonville 5s, equal to two coupons. In addition, holders of outstanding bonds shall receive a pro rata share of the net cash proceeds from the abandoned line of this railroad. As of December 31, 1942, this amounted to $59,385.

(e) Equal to three coupons.

(f) Short term debt holders offered Series A bonds, with option to take Series B.

(g) Rates of issue for warrants:

MP serials and convertibles.....)
NOT&M stock .....) 1½ per $100 of otherwise unsatisfied claim.
I-GN adjustments .....)

(h) With option for first mortgage bonds, either Series A or Series B, whichever is not taken by R. F. C.

(i) Principal amount of River and Gulf 4s as of December 31, 1942..... $34,508,000
Less anticipated payment in cash of 30%..... 10,352,400—30%

Balance of claim to be satisfied in new securities..... $24,155,600
New first mortgage bonds, Series C, offered..... 13,803,200—40%
New collateral trust notes offered..... 10,352,400—30%

Percentages shown relate to principal amount as of December 31, 1942, and are also used in table above.

(j) Offered new Plaza-Olive Building first mortgage bonds.

(k) The plan provides for the possible underwriting of the collateral trust notes. If this is arranged, holders of River and Gulf 4s will have the option of accepting either the notes, or in lieu thereof, cash for the notes at a price of not less than par, plus accrued interest.

(l) Securities shown above do not include provision for settlement of claims of general creditors, which are as follows:

Preferred claims—to be paid in cash.

General unsecured claims:

Missouri Pacific—to receive for each $1000 of principal, 10 shares of common stock, Class B, and for each $1000 of unpaid interest to the effective date of the plan, a warrant to subscribe to 15 shares of new common stock, Class B, at the price of $100 a share.

New Orleans, Texas & Mexico (Gulf Coast Lines)—to receive for each $1000 of total claim, including principal and unpaid interest to the effective date of the plan, 10 shares of common stock, Class A.

International-Great Northern—to receive for each $1000 of total claim, including principal and unpaid interest to the effective date of the plan, a warrant to subscribe to 10 shares of new common stock, Class B, at the price of $100 a share.

MISSOURI PACIFIC RAILROAD COMPANY

Distribution of Cash or New Securities for Each $1,000 Principal Amount of Claim or for Each $100 Par Value of Stock.

	Total Claim as of Jan. 1, 1943	Undisturbed	Cash and Securities Offered Without Options: Cash	Collateral Trust Notes 3½%	First Mtg. Bonds C 4%	General Mortgage A 4½%	General Mortgage B 5%	Pref. Stock 5%	Common Stock A	Common Stock B	Purchase Warrants (Number)	Additional Optional Offer: First Mortgage Bonds A 3½%	First Mortgage Bonds B 3¾%	First Mortgage Bonds C 4%
Missouri Pacific R. R. Co.														
Equipment	$1,000.0000	$1,000.0000												
Reconstruction Finance Corp. 6%	1,428.7196		$230.3560									$1,000.0000	$1,000.0000	
Bank debt, 6%	1,448.2349		253.0568									1,000.0000	1,000.0000	
Railroad Credit Corp., 1%	1,000.8619		1.0148									(2) 1,000.0000	(2) 1,000.0000	
First and refunding 5's														
Series A, due Feb. 1, 1965	1,395.8334				$400.0000	$380.0000	$150.0000	$222.0000						
Series F, due March 1, 1977	1,391.6667				398.0000	378.0000	149.0000	221.0000						
Series G, due Nov. 1, 1978	1,408.3333				403.0000	383.0000	151.0000	224.0000						
Series H, due Apr. 1, 1980	1,412.5000				404.0000	384.0000	152.0000	224.0000						
Series I, due Feb. 1, 1981	1,395.8333				400.0000	380.0000	150.0000	222.0000						
General 4's, due Mar. 1, 1975	1,393.3334								$1,393.3334					
Serial 5¼'s, due Dec. 1, 1938-56	1,529.3750								750.0000	$ 500.0000	4.1906			
Convertible 5½'s, due May 1, 1949	1,559.1667									1,000.0000	8.3875			
St. Louis, I. M. & So. River and Gulf 4's, due May 1, 1933	(4) 709.5238		6.6666	(7) $300.0000										
Plaza-Olive Bldg. 6's, due Oct. 1, 1937-40	(5) 1,000.0000	(5) 1,000.0000										(3) 400.0000	(3) 400.0000	(3) 400.0000
Cairo & Thebes First 4's due March 1, 1961	1,133.3331		100.0000		750.0000	283.3331								
Little Rock, H. S. & W. first 4's, due Jul. 1, 1939	1,320.0000					600.0000		720.0000						
Boonville, St. L. & So. first 5's, due Aug. 1, 1951	(6) 1,395.8330		(6) 50.0000		274.0000			274.0000						
Central Branch Union Pacific first 4's, due Jun. 1, 1948	1,363.3335		60.0000		370.0000	230.0000	450.0000	253.3335						
Claims of general creditors			To receive treatment as shown in footnote 8											
Preferred stock														
Common stock														
New Orleans, Texas & M. Ry. Co.														
First mortgage bonds														
Series A, 5½'s, due Apr. 1, 1954	1,333.7500				640.0000	455.0000								
Series B, 5's, due Apr. 1, 1954	1,212.5000				629.0000	447.0000								
Series C, 5's, due Aug. 1, 1956	1,195.8332				621.0000	441.0000								
Series D, 4½'s, due Aug. 1, 1956	1,176.2500				611.0000	434.0000								
Income 5's, due Aug. 1, 1956	1,062.5029				551.0000	392.0000								
Claims of general creditors			To receive treatment as shown in footnote 8											
Capital stock	100.0000								25.0000	50.0000	.3750			
International-Great Nor. R. R. Co.														
Railroad Credit Corp. 1%	1,002.0584		4.0953											
First mortgage bonds												(2) 1,000.0000	(2) 1,000.0000	
Series A, 6's, due Jul. 1, 1952	1,510.0000				123.0000	542.0000	153.0000	244.0000						
Series B, 5's, due Jul. 1, 1956	1,425.0000				116.0000	512.0000	145.0000	231.0000						
Series C, 5's, due Jul. 1, 1956	1,425.0000				116.0000	512.0000	145.0000	231.0000						
Adjustment 6's, due Jul. 1, 1952	1,735.0000								950.0000	500.0000	4.2750			
Claims of general creditors			To receive treatment as shown in footnote 8											

MISSOURI PACIFIC RAILROAD COMPANY

Distribution of Cash or New Securities for Each $1,000 Principal Amount of Claim or for Each $100 Par Value of Stock.

	Total Claim as of Jan. 1, 1943	Undisturbed	Cash and Securities Offered Without Options								Purchase Warrants (Number)	Additional Optional Offers (Note 1)					
			Cash	Collateral Trust Notes 4%	First Mtg. Bonds C 4%	General Mortgage A 4½%	General Mortgage B 5%	Pref. Stock 5%	Common Stock A	Common Stock B		First Mortgage Bonds A 3½%	First Mortgage Bonds B 3¾%	First Mortgage Bonds C 4%	Gen. Mortgage Bonds B 5%	Common Stock A (at $100 a share)	Cash
...	$1,000.0000	$1,000.0000	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
3%.	1,428.7196	.....	$230.3560	.....	.....	.....	.....	.....	.....	.....	.....	$1,000.0000	$1,300.0000	.....	.....	.....	.....
...	1,448.2349	.....	253.0568	.....	.....	.....	.....	.....	.....	.....	.....	1,000.0000	1,000.0000	.....	.....	.....	.....
...	1,000.8619	.....	1.0148	.....	.....	.....	.....	.....	.....	.....	.....	(2) 1,000.0000	(2) 1,000.0000	.....	.....	.....	.....
...	1,395.8334	.....	.....	.....	$400.0000	$330.0000	$150.0000	$222.0000	.....	.....	.....	.....	.....	.....	.....	$274.0000	$ 71.1000
...	1,391.6667	.....	.....	.....	398.0000	328.0000	149.0000	221.0000	.....	.....	.....	.....	.....	.....	.....	276.0000	71.6300
...	1,408.3333	.....	.....	.....	403.0000	333.0000	151.0000	224.0000	.....	.....	.....	.....	.....	.....	.....	275.0000	72.1200
...	1,412.5000	.....	.....	.....	404.0000	334.0000	152.0000	224.0000	.....	.....	.....	.....	.....	.....	.....	279.0000	72.4600
...	1,395.8333	.....	.....	.....	400.0000	330.0000	150.0000	222.0000	.....	.....	.....	.....	.....	.....	.....	274.0000	71.1000
...	1,393.3334	.....	.....	.....	.....	.....	.....	.....	$1,393.3334	.....	.....	.....	.....	.....	.....	.....	.....
6..	1,529.3750	.....	.....	.....	.....	.....	.....	.....	750.0000	$ 500.0000	4.1906	.....	.....	.....	.....	.....	.....
949	1,569.1667	.....	.....	.....	.....	.....	.....	.....	.....	1,000.0000	8.3875	.....	.....	.....	.....	.....	.....
and																	
...	(4) 709.5238	.....	6.6666	(7) $300.0000	.....	.....	.....	.....	.....	.....	.....	(3) 400.0000	(3) 400.0000	(3) 400.0000	.....	.....	.....
r 1,																	
...	(5) 1,000.0000	(5) 1,000.0000	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
...	1,133.3331	.....	100.0000	.....	750.0000	283.3331	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
4's,																	
...	1,320.0000	.....	.....	.....	.....	600.0000	.....	720.0000	.....	.....	.....	.....	.....	.....	.....	.....	.....
5's,																	
...	(6) 1,395.8330	.....	(6) 50.0000	.....	274.0000	.....	.....	274.0000	.....	.....	.....	.....	.....	.....	.....	.....	.....
irst																	
...	1,363.3335	.....	60.0000	.....	370.0000	230.0000	450.0000	253.3335	.....	.....	.....	.....	.....	.....	.....	.....	.....
...			To receive treatment as shown in footnote 8														
...	.....																
...	.....																
Co.																	
954	1,233.7500	.....	.....	.....	640.0000	455.0000	.....	.....	.....	.....	.....	.....	.....	.....	$138.7500	.....	86.1400
54..	1,212.5000	.....	.....	.....	629.0000	447.0000	.....	.....	.....	.....	.....	.....	.....	.....	136.5000	.....	84.7500
56..	1,195.8333	.....	.....	.....	621.0000	441.0000	.....	.....	.....	.....	.....	.....	.....	.....	133.3333	.....	83.0900
956	1,176.2500	.....	.....	.....	611.0000	434.0000	.....	.....	.....	.....	.....	.....	.....	.....	131.2500	.....	81.4900
...	1,062.5028	.....	.....	.....	551.0000	392.0000	.....	.....	.....	.....	.....	.....	.....	.....	119.5025	.....	74.1901
...			To receive treatment as shown in footnote 8														
...	100.0000	.....	.....	.....	.....	.....	.....	.....	25.0000	50.0000	.3750	.....	.....	.....	.....	.....	.....
Co.																	
...	1,002.0584	.....	4.0953	.....	.....	.....	.....	.....	.....	.....	.....	(2) 1,000.0000	(2) 1,000.0000	.....	.....	.....	.....
2...	1,510.0000	.....	.....	.....	123.0000	542.0000	153.0000	244.0000	.....	.....	.....	.....	.....	.....	.....	503.0000	150.4900
6...	1,425.0000	.....	.....	.....	116.0000	512.0000	145.0000	231.0000	.....	.....	.....	.....	.....	.....	.....	473.0000	122.6300
6...	1,425.0000	.....	.....	.....	116.0000	512.0000	145.0000	231.0000	.....	.....	.....	.....	.....	.....	.....	473.0000	122.6300
52..	1,735.0000	.....	.....	.....	.....	.....	.....	.....	950.0000	500.0000	4.2750	.....	.....	.....	.....	.....	.....
...			To receive treatment as shown in footnote 8														

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 2918

MISSOURI PACIFIC RAILROAD COMPANY REORGANIZATION

Submitted September 12, 1944. Decided October 9, 1944

Upon petitions, plan for the reorganization of the Missouri Pacific Railroad Company, et al., approved July 4, 1944, pursuant to section 77 of the Bankruptcy Act, further modified and approved.[1]

Appearances as in prior reports, and in addition, Irving Rand for intervener.

THIRD SUPPLEMENTAL REPORT OF THE COMMISSION

By the Commission:

By report and order entered July 4, 1944, in the above proceeding, 257 I. C. C. ..., we approved a modified plan for the reorganization of the Missouri Pacific Railroad Company, et al., hereinafter called the debtor, pursuant to section 77 of the Bankruptcy Act, as amended, 11 U. S. C. 205. Within the statutory period of 60 days from the date of that report

1 For previous reports see 249 I. C. C. 650; 252 I. C. C. 818; 254 I. C. C. 858 and 859; and 257 I. C. C. ....

and order, petitions for modification of the plan were filed by the debtor, the group of institutional holders of Missouri Pacific first and refunding mortgage bonds, John M. Balliet, owner of various system securities, Chemical Bank & Trust Company, trustee for Missouri Pacific secured serial 5¼-percent bonds, the protective committee for International first-mortgage bondholders, the protective committee for the Missouri Pacific common stockholders, the protective committee for Missouri Pacific preferred stockholders, the Missouri Pacific convertible bondholders' group, Andrew W. Comstock, holder of Missouri Pacific secured serial 5¼-percent bonds, Helen J. Comstock, owner of New Orleans stock, Fred D. Wilson, holder of Missouri Pacific general-mortgage bonds, and W. Seymour Smith, Donald D. Wilson, and William H. Bigga, as directors of the Missouri Pacific. A reply to the petition of the Missouri Pacific convertible bondholders' group was filed by the Commercial National Bank & Trust Company of New York, trustee for Missouri Pacific convertible 5½-percent bonds. Several parties have requested oral argument, an opportunity to file briefs, and a reopening of the proceeding for further hearings.

The petition filed by the group of institutional holders of Missouri Pacific first and refunding bonds recites that the group, comprising 11 institutions holding $36,341,000 of the bonds, was formed after the termination on July 21, 1944, of the protective committee for holders of the bonds. The group has been permitted to intervene in this proceeding. It states that its members had all formerly deposited their bonds with the protective committee, that the same individuals serve as chairman and secretary of the

group as formerly served in similar positions with the committee, that the same counsel has been retained, and that other holders of first and refunding mortgage bonds who have intervened in the proceeding hold comparatively small amounts of the bonds. The group requests that its name be substituted for the predecessor protective committee in the provisions of the plan which afford the protective committee the right to designate 5 of the first board of directors of the reorganized company and 2 of the reorganization managers. We approve this modification of our plan.

Balliet's petition is confined to a request that there be no voting trust. He contends that we have no power under section 77 to approve a plan that will deny to the stockholders of the reorganized company by means of the establishment of a voting trust their right to manage, control and operate the railroad after consummation of the plan. While the power to require a voting trust is not expressly granted by section 77, it is our opinion that the provisions of the statute that a plan shall include provisions modifying or altering the rights of creditors generally or of any class of them, secured or unsecured, or of stockholders, either through the issuance of new securities of any character or otherwise, and also the general provisions of the statute that a plan shall provide adequate means for the execution of the plan, fully empower us to exercise such a right if we consider it necessary as a part of the plan to provide a voting trust in order to afford adequate protection of any class or classes of creditors or stockholders to assure a stable, experienced and impartial management of the new company or to serve any other useful and necessary purpose. Since any plan approved by us

and the court must under the statute be submitted to all creditors and stockholders found to have an interest in the plan for their acceptance or rejection and thereafter must be confirmed by the court, we find no basis for Balliet's further contention that a requirement for a voting trust violates the bondholders' rights under the Constitution as a deprivation of their property without due process of law. Balliet's petition will be denied.

We do not find in the other petitions any references to facts of record which were not considered by us in our report of July 4, 1944, nor do the arguments now advanced differ essentially from those which have already been effectively presented to us and which in our opinion have been the subject of adequate discussions in our reports and which were decided therein. In general, the petitions embrace requests for the fixing of a larger maximum capitalization, based upon contentions that greater consideration than that accorded by us should be given to recent increases in the investments and other assets of the separate groups of debtors and of the system, the recently increased earnings, especially during the last 4 years, and to the testimony of record with respect to the future prospective earnings of the debtor upon the termination of the war. All these arguments are urged to the end that the respective petitioners be granted greater consideration in the satisfaction of their claims than that accorded them by the plan or, in the case of the Missouri Pacific stockholders, that some valuable participation be granted them in the reorganized company by allocation of shares of stock or warrants for purchase of stock.

It is asserted by one of the petitioners that our controlling reason for not approving the issuance to Missouri Pacific stockholders of the warrants proposed for that purpose by the compromise plan was that the total capitalization of the debtor might thereby be increased, since, under the terms of the compromise plan, the cash proceeds from exercise of the warrants would be used by the new company "for any proper corporate purpose." For that reason this petitioner expressly requests that we authorize the additional warrants but require the proceeds to be used to retire new general-mortgage bonds. The result then would be no change in the amount of authorized capitalization. It should be observed, however, that we expressly stated in our report that, in view of the impossibility of providing for substantial satisfaction of junior system creditors in a plan formulated within a prudent capitalization, it would be inequitable to offer any rights of value to the Missouri Pacific stockholders, whose equities we found to be without value, and that such rights, if possessing any value, should accrue to the junior creditors and not to the stockholders. There is no reason for so diluting the stock and the warrants issuable under the approved plan by the further issuance to the junior creditors of additional warrants. As stated in our report, the issuance of any additional warrants might also have a material effect upon the extent of control of the new company exercisable by the different classes of claimants under the terms of the plan. This petition will be denied.

William H. Biggs, counsel representing several system security holders, renews his request that we adjudicate the question of the validity of the Missouri

Pacific advances of cash to the New Orleans before approving any plan. We discussed in our report of July 4, 1944, the matter of these advances and counsel's contentions with respect to their validity. There is nothing which we desire to add to what we stated therein.

Several of the petitioners request that the plan provide for further payments in cash of all or parts of certain claims in addition to the cash payments authorized in the plan for such purposes. We analyzed at length in our report the cash position of the trustee of the debtor as disclosed by the record at that time and stated our conclusions in regard to the manner in which we considered the cash on hand should be used in the reorganization. There is pending in the court a petition that the debtor's trustee be directed to pay in cash 30 percent of the principal of the River and Gulf bonds additional to the 30 percent heretofore directed by the court to be paid. The payment of the latter was assumed by us to have been effected when we determined the allocations to present creditors of cash and new securities as stated in our report of July 4, 1944. If the petition to the court for the further payment is granted, it will result in the nonissuance of the $10,352,400 of new collateral-trust 3½-percent 10-year notes, authorized to be issued under the terms of the approved plan. As a further consequence of such payment, there also would not be issued $12,940,000 of new first and refunding mortgage series-C bonds, which would be pledged as collateral security for the payment of the 10-year notes.

We are urged to modify the plan so as expressly to approve the payment of this additional 30 percent

of the principal of the River and Gulf bonds and the distribution to other creditors of securities in the principal amount of the collateral-trust notes which otherwise would be distributed to the River and Gulf bondholders. Under the terms of the approved plan, no new securities would be issued in lieu of the collateral-trust notes and, upon consummation of the plan, the amount of total capitalization would reflect the nonissuance of the notes.

In determining cash distributions as well as fixing total capitalization as stated in our report, we recognized that the cash position of the debtor's trustee would vary in the future and that "surplus cash" might either exceed or fall short of our estimates. We believed and are still of the opinion, that the court, in the light of current conditions, should determine any amounts of cash available and not authorized by the plan, which might be so distributed, within the framework of the plan, from time to time up to the date of consummation of the plan. In fixing the amount of capitalization and in approving the provision of the plan authorizing cash distributions upon order of the court prior to consummation, we recognized the possibility that as of the date of consummation the system capitalization might be somewhat less than the $560,000,000 approved by us. We contemplated, however, insuring that amount as the maximum. Even if the collateral-trust notes are not issued, an increase in equipment obligations resulting from a future demand for, and availability of, additional equipment prior to the date of consummation of the plan may result in total capitalization as of that time being about the same as the maximum fixed by us.

For these reasons we will deny the petitions requesting our approval of the additional cash payment to the River and Gulf bondholders or other additional cash distributions as well as the issuance and distribution to other creditors of additional new securities in lieu thereof.

One petitioner representing certain Missouri Pacific convertible bondholders urges that the provisions of the plan whereby the trustee for the convertible bonds is given the right of appointment of two directors and a joint right to appoint one reorganization manager be changed to provide that we "select a trustee for the convertible bondholders who shall impartially act for the benefit of all convertible bonds and whose services shall commence with the confirmation of the plan". This petitioner contends that the present successor indenture trustee is the "hand picked appointee of the Alleghany Corporation", an allegation which the trustee, Commercial National Bank and Trust Company of New York, denies. As pointed out by the trustee in its reply, it was selected to act as successor trustee by resolution of the board of directors of Missouri Pacific adopted at a meeting held on January 13, 1937, pursuant to the provisions of the indenture. It states that ever since its appointment it has represented all holders of the convertible bonds impartially. There is no evidence of record to the contrary. Petitioner's request will be denied.

Several of the petitioners have requested oral argument. In view of the fact that no matters or arguments of substance have been presented by the petitions, which have not been considered and discussed by us in our report of July 4, 1944, these requests

will be denied. We will also deny the several requests for filing of further briefs and for reopening the proceeding for further hearings, as well as all other prayers of the petitions except as indicated herein.

On our own motion.—In the discussion in our report of July 4, 1944, of the investment items of the system producing a total of $573,926,178 as correctly stated in the first paragraph on page 42 of the mimeographed copy of our report, we inadvertently omitted reference to an item of $1,643,187 appearing on the debtor's balance sheet as of December 31, 1934, as representing "Other investments", and also an item of about $100,000 held in sinking funds and as deposits held by mortgage trustees in lieu of mortgage property sold, both of which are included in total investments shown. The report has been corrected and the omissions are supplied in the report about to be printed.

There are several typographical errors in appendixes E and F attached to our report of July 4, 1944, and made a part thereof.[2] These errors will be corrected in the printed copy of our report.

In paragraph T of our order of July 4, 1944, we provide the treatment to be accorded holders of general unsecured claims against the New Orleans and its subsidiaries. Our intention is to include in this provision all subsidiaries of the New Orleans except-

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2 These errors are as follows:

Appendix E, sheet 1.—The amount of $29,262,840 appearing as the first item under the column entitled "First Mortgage Bonds Series C 4% 50-yrs." should be $89,262,840; the column entitled "Gen. Mortgage Ser. B 5% 25-yrs." should be entitled "Gen. Mortgage Ser. B 5% 75-yrs."; and the footnote symbol "(h)" where it appears in reference to the amount of $10,352,400 in the column headed "Collateral Trust Notes 3½% 10-yrs." should be stricken.

Appendix F, sheet 1.—The first item in the last column under the heading "Cash" should be 71.1000 instead of 71.0000.

ing the International which is treated in the next succeeding paragraph of the order. Our order will be corrected accordingly.

In order to meet the requirements of the New York Stock Exchange as to listing stocks we will add a provision to the plan that the holders of the preferred stock, voting as a class, shall have the right to elect not less than two directors after default of the payment of the equivalent of six quarterly dividends, and that the affirmative vote of the holders of at least two-thirds of the preferred stock shall be required as a prerequisite to any charter or bylaw amendment altering materially any existing provision of such preferred stock.

SUMMARY

Other than minor corrections and clarifications of our report and order of July 4, 1944, which have been hereinabove enumerated, the only modifications approved herein are:

(1) In section U of the plan, wherein the protective committee for Missouri Pacific first and refunding mortgage bonds is given the right of designation of five members of the panel of nominees for the first board of directors of the reorganized company, we will substitute for the protective committee, the group of institutional holders of Missouri Pacific first and refunding mortgage bonds and will approve a similar substitution in section V of the plan in respect of the designation of two of the reorganization managers.

(2) We will provide in section P of the plan that the preferred stock, voting as a class, shall have the right to elect not less than two directors after default

of the equivalent of six quarterly dividends and that the affirmative vote of the holders of at least two-thirds of such stock shall be required as a prerequisite to any charter or bylaw amendment altering materially any existing provision of such stock.

We conclude and find that the plan of reorganization thus modified will meet the requirements of section 77(b) and (e) of the Bankruptcy Act, will be compatible with the public interest, and should be approved.

An appropriate order, superseding our order of July 4, 1944, will be entered approving the plan approved by us on July 4, 1944, as herein modified.

Miller, Commissioner, dissenting in part:

I dissent insofar as the petitions for the issuance of warrants to stockholders are denied. However, if such warrants were allowed, it is my opinion that the proceeds thereof should be used to retire fixed interest bonds instead of new general-mortgage bonds, as requested. See my dissent in the prior report of July 4, 1944, 257 I. C. C.

Commissioner Porter did not participate in the disposition of this proceeding.

THIRD SUPPLEMENTAL ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of October, A. D. 1944.

Finance Docket No. 9918

MISSOURI PACIFIC RAILROAD COMPANY
REORGANIZATION

It appearing, That this Commission, on April 9, 1940, made and filed its supplemental report and entered its supplemental order in this proceeding, 240 I. C. C. 15, approving a plan for the reorganization of the Missouri Pacific Railroad Company, the New Orleans, Texas & Mexico Railway Company, the International-Great Northern Railroad Company, the Missouri Pacific Railroad Corporation in Nebraska, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, the San Antonio, Uvalde & Gulf Railroad Company, the Houston North Shore Railway Company, the Boonville, St. Louis and Southern Railway Company, the Asherton and Gulf Railway Company, the Asphalt Belt Railway Company, the Houston and Brazos Valley Railway Company, the Iberia, St. Mary & Eastern Railroad Company, the New Iberia & Northern Railroad Company, the Austin Dam and Suburban Railway Company, The Orange & North-

western Railroad Company, the Rio Grande City Railway Company, the San Antonio Southern Railway Company, the San Benito and Rio Grande Valley Railway Company, the Cairo and Thebes Railroad Company, The Chester and Mount Vernon Railroad Company, the Fort Smith Suburban Railway Company, the Marion & Eastern Railroad Company, the Sugar Land Railway Company, and the Natchez & Southern Railway Company, being all of the debtors in the proceeding excepting the Missouri-Illinois Railroad Company, debtor, that plan being a modification of the plan approved by this Commission's report and order of January 10, 1940, 239 I. C. C. 7.

It further appearing, That after argument before, and submission of briefs to, the United States Circuit Court of Appeals for the Eighth Circuit, the Circuit Court of Appeals remanded the proceeding to the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri; that thereafter further objections to the plan of reorganization were filed in the District Court and, after a hearing on the objections, the District Court, hereinafter called the court, referred the proceeding back to this Commission for further proceedings in accordance with the applicable provisions of section 77 of the Bankruptcy Act, as amended, including the consideration of modifications of the plan or the proposal of new plans;

It further appearing, That a further hearing has been held, and this Commission, on July 4, 1944, made and filed its second supplemental report and order, making certain modifications and adjustments in the plan of reorganization previously approved;

It further appearing, That upon consideration of petitions filed within the statutory period of 60 days from the date of the second supplemental report and order and of a reply filed to one of the petitions and upon further consideration of the record, this Commission upon the date hereof, made and filed its third supplemental report containing its findings of fact and conclusions thereon, which report, together with the previous reports of January 10, 1940, April 9, 1940, and July 4, 1944, is hereby referred to and made a part hereof, in which report of even date herewith it has approved certain modifications in the plan for the reorganization of the debtors:

It is ordered, That the following modified plan of reorganization of the debtors be, and it is hereby, approved:

PLAN OF REORGANIZATION

A. **Cash distributions.**—Cash in the treasuries of the debtors available for distribution may be distributed to creditors from time to time, pending the consummation of the plan, as the court may from time to time direct. Cash so paid shall be credited *pro tanto* against (a) cash payable under the plan and/or (b) interest and dividends accrued on new securities issuable under the plan up to the interest adjustment date, as the reorganization managers, with the approval of the court, shall determine. The interest adjustment date shall be the date (to be fixed by the reorganization managers with the approval of the court) to which interest and dividends on new securities are to be paid in cash at the time of the consummation of the plan. Different interest adjustment dates may be fixed for different classes of new securities.

If any creditor who shall receive under the plan alternative offers of cash or securities as hereinafter in the plan provided shall elect to accept such securities in lieu of cash, such creditor shall be required to refund an amount equal to any excess of (a) cash authorized after December 31, 1942, to be distributed in respect of securities owned by such creditor over the sum of (b) any cash payable to such creditor under the plan (exclusive of such alternative cash offer) and (c) interest and dividends accrued on new securities distributable to such creditor under the plan up to the interest adjustment date.

If the total cash authorized to be distributed on claims of any class after December 31, 1942, and prior to the consummation of the plan (after deducting any amount required to be refunded because of election to accept any alternative offer in securities), shall exceed the sum of (a) the total amount of cash payable on claims of such class as hereinafter set forth in the plan, (b) interest and dividends accrued on new securities distributable to claims of such class from the effective date, hereinafter stated, up to the interest adjustment date, and (c) if the effective date be changed pursuant to the following section B hereof, interest on the principal of the claims of such class from December 31, 1942 to the new effective date, such excess payment shall be deemed to constitute a retirement, *pro tanto*, at their principal amount of the most senior class of new securities issuable in respect of claims of such class under the plan (collateral-trust notes being deemed senior to first-mortgage bonds for the purposes of this section and of section B hereof) and the aggregate amount of such class of new securities actually issued under the plan

shall be correspondingly reduced. Any such excess cash payments shall be deemed to be credits against sinking fund requirements for the issue or issues so reduced. The reorganization managers may, with the approval of the court, make any cash adjustments necessary to avoid the issue of fractional amounts of new securities.

B. **Effective date.**—The effective date of the plan shall be January 1, 1943, unless changed as hereinafter in this section provided. Interest on the principal of all allowed claims shall be computed to the effective date.

The effective date may, by the vote of a majority of the reorganization managers, including the reorganization manager designated by the junior creditors as hereinafter in the plan provided, with the approval of the court, be changed to any later January 1 (not later than the consummation of the plan), if, but only if, system earnings available for interest for each calendar year between December 31, 1942, and the effective date shall have exceeded by at least $5,000,000 all interest accruing for such calendar year on claims of creditors against the debtors (other than claims of general creditors against the International) outstanding during such calendar year.

If the effective date shall be changed pursuant to the last preceding paragraph:

(a) there shall be paid in cash to the holders of those classes of claims entitled under the plan to receive any new first-mortgage bonds or any collateral trust notes, issuable under the plan as hereinafter provided, an amount equal to the interest accruing on all such claims, excluding

equipment trust obligations and Plaza-Olive Building bonds, for the period from December 31, 1942, to the new effective date; *provided, however,* that in the case of the Reconstruction Finance Corporation and the bank debt interest shall be paid only at the rate of 4 percent per annum;

(b) there shall be applied to the reduction of the debt to be issued under the plan an amount of cash sufficient to reduce such debt by a principal amount equal to interest accruing from December 31, 1942, to the effective date on all classes of claims (other than claims of general creditors against the International) not entitled under the plan to receive first-mortgage bonds or collateral trust notes. Such reduction of debt may be effected (1) by payment of all or any part of any of the claims mentioned in clause (a) above and/or (2) by the purchase or redemption and retirement of debt to be issued under the plan, all as the reorganization managers shall determine;

(c) the number of shares of class A common stock and class B common stock issuable under the plan as hereinafter provided shall be increased in the aggregate by an amount equal (at $100 per share) to interest accruing from December 31, 1942 to the effective date on all classes of claims (other than claims of general creditors against the International) not entitled under the plan to receive first-mortgage bonds or collateral trust notes; and each such class shall receive (in addition to other securities allotted under the plan) a number of shares of common stock, class A or class B, equal (at $100 per share) to the interest accruing on such claims from December 31, 1942, to the effective date.

In making the distribution of additional common stock pursuant to subparagraph (c) above, any class of creditors allotted no class B common stock under the plan shall receive its additional allotment in class A common stock and any class allotted only class B common stock under the plan shall receive its additional allotment in class B common stock. Classes allotted both class A common stock and class B common stock under the plan shall be entitled to have their respective allotments increased proportionately.

New securities issuable hereunder shall be dated as of the effective date or, in the discretion of the reorganization managers and with the approval of the court, any class of new securities may be dated as of the interest adjustment date therefor, but in the latter case, creditors who receive new securities of such class shall receive the same amounts of cash and be entitled to the same rights in respect of accruals and accumulations as if the new securities of such class had been dated as of the effective date.

The carrying out of the plan shall not require any retroactive change in the operations of the trustee of the estate of the debtors or in the reports made to this Commission or in any other reports or returns for the period prior to the date when such new securities are issued.

Debtors included in the plan.—This plan of reorganization, hereinafter called the plan, shall include Missouri Pacific Railroad Company, hereinafter called the Missouri Pacific, the New Orleans, Texas & Mexico Railway Company, hereinafter called the New Orleans, the International-Great Northern Railroad

Company, hereinafter called the International, the Missouri Pacific Railroad Corporation in Nebraska, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, the San Antonio, Uvalde & Gulf Railroad Company, the Houston North Shore Railway Company, the Boonville, St. Louis and Southern Railway Company, the Asherton and Gulf Railway Company, the Asphalt Belt Railway Company, the Houston and Brazos Valley Railway Company, the Iberia, St. Mary & Eastern Railroad Company, the New Iberia & Northern Railroad Company, the Austin Dam and Suburban Railway Company, The Orange & Northwestern Railroad Company, the Rio Grande City Railway Company, the San Antonio Southern Railway Company, the San Benito and Rio Grande Valley Railway Company, the Cairo and Thebes Railroad Company, The Chester and Mount Vernon Railroad Company, the Fort Smith Suburban Railway Company, the Marion & Eastern Railroad Company, the Sugar Land Railway Company, and the Natchez & Southern Railway Company. All of the above named debtors are herein collectively referred to as the debtors. The Missouri-Illinois Railroad Company is not included, no plan for its reorganization having been filed with this Commission and the court having, on May 31, 1944 entered its order directing that as of that date all of the assets of the estate of that debtor be delivered to the Missouri-Illinois Railroad Company, the court, however, reserving jurisdiction, among other things, for the entering of a final decree dismissing this reorganization proceeding as to that debtor.

C. **Transfer of properties.**—The properties of the debtors and of the Kansas-Missouri Elevator Company and Natchez & Louisiana Railway Transfer Company shall be merged or consolidated by transfer of the properties of all such companies to a new company, or, in the discretion of the reorganization managers with the approval of the court, to the Missouri Pacific, the reorganized company being hereinafter referred to in either case as the new company. The new company shall be incorporated under the laws of such State and shall have its general offices at such place as the court may direct, the laws of any State to the contrary notwithstanding. In the discretion of the reorganization managers and with the approval of the court, (a) the properties of the International and Austin Dam & Suburban Railway Company may be transferred to the International or to a separate new company (either of which are hereinafter called the reorganized International), and (b) the properties of the Natchez & Southern Railway Company and Natchez & Louisiana Railway Transfer Company may be transferred to the new company or to a separate new company (which latter is hereinafter called the reorganized Natchez). Any such transfer may be effected by a merger, consolidation, transfer of assets and/or by any other means approved by the reorganization managers. All such transfers shall be made subject to and in accordance with the plan.

D. **New capitalization.**—The capitalization of the new company after consummation of the plan shall, subject to the provisions of the preceding sections A and B hereof, consist substantially of the equipment obligations then outstanding of any or all of the aforesaid companies or of the trustee thereof, amount-

ing as of January 1, 1943, to approximately $15,755,000, which shall be assumed by the new company (except in certain cases as will be hereinafter provided); approximately $166,809,000 of first-mortgage bonds of the new company, of which approximately $31,472,000 shall be either series A 15-year 3½-percent bonds or series B 25-year 3¾-percent bonds, and approximately $135,337,000 of series C 50-year 4-percent bonds (exclusive of approximately $12,940,000 principal amount to be pledged to secure the new collateral-trust 10-year notes hereinafter referred to); approximately $591,000 of Plaza-Olive Building first-mortgage bonds; approximately $10,352,000 of 10-year collateral-trust secured 3½-percent notes; approximately $159,175,000 of general-mortgage income bonds, of which approximately $120,676,000 shall be series A 65-year cumulative 4½-percent bonds and approximately $38,499,000 shall be series B 75-year 5-percent bonds; approximately $57,717,000, par value, of series A 5-percent preferred stock of $100 par value per share; and approximately 1,500,810 shares of no par common stock, of which 911,840 shares shall be class A common stock and approximately 588,970 shares class B common stock, together with such additional shares of common stock as may be issued, as hereinafter provided, in satisfaction of allowed claims of general unsecured creditors of the debtors not entitled to preference, upon the terms hereinafter prescribed. In addition to the above stated capitalization of the new company there shall be issued as hereinafter provided, warrants entitling the holders thereof to purchase for a period of 10 years after consummation of the plan, approximately 494,699 shares of new class B common stock at a price of $100 a share, plus such additional

warrants as shall, under the terms of the plan be issued to the holders of general unsecured claims against the debtors.

If the properties of the International and the Austin Dam & Suburban Railway Company be transferred to the reorganized International, the capitalization of the reorganized International, after consummation of the plan, shall consist substantially of equipment obligations, if any, then outstanding of the trustee of the estates of the International and the Austin Dam & Suburban, approximately $23,415,000 of new first-mortgage income 5-percent bonds, and such amount (not exceeding approximately $26,585,000) of new common stock with or without par value as the reorganization managers may determine. If the properties of the Natchez & Southern Railway Company and Natchez & Louisiana Railway Transfer Company be transferred to the reorganized Natchez, the capitalization of the reorganized Natchez, after consummation of the plan, shall consist substantially of equipment obligations, if any then outstanding, of the Natchez & Southern Railway Company, its trustee, and the Natchez & Louisiana Railway Transfer Company and approximately 5,000 shares of new common stock with or without par value, as the reorganization managers may determine. In either such event the capitalization of the new company shall be reduced by the amount of equipment obligations assumed by the reorganized International and the reorganized Natchez and all of the bonds and stock of the reorganized International and the reorganized Natchez, whether issued in reorganization or thereafter, shall be transferred to the new company and pledged under its new first-mortgage and general-mortgage, the creation of which are hereinafter provided for.

E. Disposition of old securities.—Upon the consummation of the plan and the issue and distribution of new securities as hereinafter provided, the existing stocks of the debtors and of the Kansas-Missouri Elevator Company and the Natchez & Louisiana Railway Transfer Company, when their properties shall have been conveyed as provided in the plan, together with all mortgage bonds, debenture bonds, notes and other securities (except equipment obligations which remain undisturbed) issued by them and outstanding, including any of such securities pledged, shall be surrendered to the reorganization managers and canceled, and all mortgages and indentures (other than indentures or agreements securing equipment obligations which remain undisturbed) shall be satisfied of record and canceled.

F. Cancellation of old securities and indebtedness.—The following securities shall be canceled upon consummation of the plan, and no securities of the new company shall be issued in respect of them:

(1) All securities issued by any of the debtors which are owned by one or more of the debtors.

(2) The following blocks of various classes of securities which are owned by the Missouri Improvement Company or Western Coal & Mining Company: (a) Owned by Missouri Improvement Company—$899,000 Missouri Pacific Railroad Company convertible 5½-percent bonds; 16,100 shares Missouri Pacific Railroad Company preferred stock; 7,600 shares Missouri Pacific Railroad Company common stock; and $2,095,000 International-Great Northern Railroad Company adjustment-mortgage 6-percent bonds; and (b) owned by Western Coal & Mining

Company—$820,000 Missouri Pacific Railroad Company first and refunding mortgage 5-percent bonds, series F; $30,000 Missouri Pacific Railroad Company first and refunding mortgage 5-percent bonds, series I; $40,000 St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions first-mortgage 4-percent bonds; $275,000 International-Great Northern Railroad Company adjustment-mortgage 6-percent bonds; and $11,500 Boonville, St. Louis & Southern Railway Company first-mortgage 5-percent bonds.

(3) The following indebtedness of the debtors and of the Western Coal & Mining Company, the Missouri Improvement Company, and the Missouri Pacific Transportation Company: (a) $10,565,227 debt of New Orleans, Texas & Mexico Railway Company to Missouri Pacific Railroad Company, together with unpaid interest; (b) $2,788,211 debt (as of June 30, 1943) of International-Great Northern Railroad Company to Missouri Pacific Railroad Company and New Orleans, Texas & Mexico Railway Company, together with unpaid interest; (c) $500,000 debt of Western Coal & Mining Company to Missouri Pacific Railroad Company, including unpaid interest; (d) the indebtedness, including unpaid interest, of Missouri Improvement Company to Missouri Pacific Transportation Company in the principal amount of $2,877,971; and of Missouri Pacific Transportation Company to Missouri Pacific Railroad Company in the principal amount of $3,439,623; being the indebtedness incurred for the purchase of the securities above listed as owned by Missouri Improvement Company.

(4) The following blocks of securities: (a) $1,628,000 Missouri Pacific general-mortgage 4-percent

bonds, reserved for issuance against a like principal amount of Central Branch Union Pacific Railway Company first-mortgage 4-percent bonds, provided for elsewhere; (b) $382,578.75 Missouri Pacific Railroad Company general-mortgage 4-percent bonds reserved for issuance against assessment on old Missouri Pacific Railway common stock; (c) $5,000 Boonville, St. Louis & Southern Railway Company first-mortgage 5-percent bonds, reserved for issuance against old Boonville bonds; (d) $765,157 Missouri Pacific Railroad Company common stock, reserved against old Missouri Pacific Railway Company common stock; (e) $167,100 New Orleans, Texas & Mexico Railway Company common stock, reserved against deposit of St. Louis & San Francisco, New Orleans, Texas & Mexico Division bonds.

Nothing in section E or in this section F shall be deemed to require (1) the cancellation of the capital stock of the International if it shall be retained as a separate corporation as herein permitted by the plan; or (2) the cancellation of the voting stock issued by any debtor if it shall be needed to effect a dissolution of such debtor or if the corporate existence of such debtor should, in the opinion of the reorganization managers, be preserved in order to retain any valuable franchise or other right which would be seriously impaired or destroyed if transferred to the new company, the reorganized International or the reorganized Natchez.

G. **Disposition of funds on deposit with mortgage trustees under old indentures.**—Upon consummation of the plan, all funds on deposit with the mortgage trustees of the debtors, representing sums paid from time to time to such trustees for the release of prop-

erties from the liens of the mortgages, sale of scrap, dividends, interest, and otherwise, and all collateral pledged under such mortgages shall be surrendered to the reorganization managers free from existing mortgage liens (excepting the cash proceeds from salvage of the properties of the Boonville, St. Louis & Southern Railway Company, debtor, for which a different disposition is herein provided), after deductions therefrom of any amounts which the court may find should be deducted under the provisions of the mortgages and consistent with the plan of reorganization. The new company shall pay, in cash, all interest on the bonds of the debtors which had been declared payable but had not been paid prior to the filing of the petitions by the debtors under section 77 of the Bankruptcy Act and, subject to the provisions of section A hereof, all interest which shall have been ordered paid by the court subsequent to the dates of filing of such petitions up to the date of consummation of the plan but which shall not have been paid, if and when such coupons are presented by the holders thereof; provided, however, that nothing herein shall require the new company to pay any interest which shall be barred by the statute of limitations.

H. **Disposition of collateral held by R. F. C., R. C. C. and the Banks.**—Upon consummation of the plan, all collateral pledged by the debtors as security for their notes to the Reconstruction Finance Corporation, Railroad Credit Corporation, and J. P. Morgan & Company and participating banks shall be surrendered to the new company.

I. **The new first-mortgage bonds.**—The new first-mortgage bonds shall be secured by a new, open, first mortgage constituting a first lien, subject only to the

liens of equipment obligations and the Plaza-Olive Building first mortgage, on all properties and assets, including securities and leaseholds, owned by the new company upon consummation of the plan and, subject to liens and mortgages in existence at the time of acquisition and to purchase money liens and mortgages, upon all property acquired by the new company after reorganization, except land grant lands not used in or necessary for the operation of the railroad and such other property, if any, as the reorganization managers with the approval of the court may determine to exclude, and except that (a) if the new company shall acquire the properties of any company (other than a subsidiary wholly owned at the time of consummation of the plan) constituting a class I carrier, such properties shall not be subject to the lien of the first mortgage unless acquired in whole or in part by the use of first-mortgage bonds or general-mortgage bonds, or moneys deposited under either of those mortgages and (b) if the new company shall be consolidated with, or merged into, or shall sell its assets substantially as an entirety to any other class I carrier (other than a subsidiary wholly owned at the time of consummation of the plan) no properties theretofore owned or thereafter acquired by such other company shall be subject to the lien of the first mortgage except properties thereafter acquired which shall be appurtenant or incident to properties subject to the lien of the first mortgage or which shall consist of any line of railroad or securities representing control thereof, which will displace or otherwise adversely affect the use theretofore made of, or have the effect of diverting traffic from, any line of railroad then subject to the first mortgage, or which shall be

within the maintenance or replacement covenants of the first mortgage or which shall be acquired in whole or in part by the use of first-mortgage bonds or general-mortgage bonds or moneys deposited under the first mortgage or the general mortgage.

So far as the reorganization managers may deem practicable, such lien shall be in the form of a direct mortgage, but it may take the form of the pledge or assignment of securities of a corporation or corporations owning, or securities having a lien upon, property to which the lien is intended to extend. The first mortgage shall contain provisions permitting, upon suitable terms, the use free from the lien of the mortgage of any securities subject thereto in effecting a merger or consolidation of the issuer of such securities into the Missouri Pacific system, subject, however, to the obtaining of such governmental authority for such merger or consolidation as may be then required.

First-mortgage bonds, other than series A, B and C bonds, may be issued from time to time without limit as to aggregate amount in different series, subject to such limitations and restrictions as may be specified in the first mortgage, payable on such date or dates, in such denominations, bearing interest at such rates, and containing such provisions in regard to sinking funds, redemption, conversion, taxes, place or places and money or moneys of payment, and registration, and having such other characteristics as may be prescribed by the board of directors of the new company at the time of issue, but, with respect to the lien of the first mortgage, all equally secured.

First-mortgage bonds, series A, B and C, shall be issued in the reorganization and shall respectively be limited in authorized principal amount to the amount necessary to carry out the terms of the plan, which require the issuance or pledge of such bonds.

Series A bonds shall be limited to the principal amount necessary to carry out the plan. They shall mature 15 years after their date, shall bear interest at the rate of 3½ percent per annum payable semi-annually and shall be redeemable as a whole or in part on any interest-payment date on 30 days' notice, and at any other time on 60 days' notice, at 101 percent of their face value during the first 3 years, 100¾ percent during the next succeeding 3 years, 100½ percent during the next succeeding 3 years, 100¼ percent during the next succeeding 3 years, and at 100 percent thereafter until maturity, together with accrued interest. Bonds of series A shall be redeemable for the sinking fund at the principal amount thereof plus accrued interest.

Series B bonds shall be limited to the principal amount necessary to carry out the plan. They shall mature 25 years after their date, shall bear interest at the rate of 3¾ percent per annum payable semi-annually, and shall be redeemable as a whole or in part on any interest payment date on 30 days' notice, and at any other time on 60 days' notice, at 102½ percent of their face value during the first 3 years, 102¼ percent during the next succeedings 3 years, 102 percent during the next succeeding 3 years, 101¾ percent during the next succeeeding 2 years, 101½ percent during the next succeeding 2 years, 101¼ percent during the next succeeding 2 years,

101 percent during the next succeeding 2 years, 100¾ percent during the next succeeding 2 years, 100½ percent during the next succeeding 2 years, 100¼ percent during the next succeeding 2 years, and at 100 percent thereafter until maturity, together with accrued interest. Bonds of series B shall be redeemable for the sinking fund at the principal amount thereof plus accrued interest.

Series C bonds shall be limited to the principal amount necessary to carry out the plan. They shall mature 50 years after their date, shall bear interest at the rate of 4 percent per annum payable semi-annually, and shall be redeemable as a whole or in part on any interest payment date on 30 days' notice, and at any other time on 60 days' notice, at 106 percent of their face amount during the first 4 years, 105½ percent during the next succeeding 4 years, 105 percent during the next succeeding 4 years, 104½ percent during the next succeeding 4 years, 104 percent during the next succeeding 4 years, 103½ percent during the next succeeding 4 years, 103 percent during the next succeeding 4 years, 102½ percent during the next succeeding 4 years, 102 percent during the next succeeding 4 years, 101½ percent during the next succeeding 4 years, 101 percent during the next succeeding 4 years, 100½ percent during the next succeeding 3 years, and at 100 percent thereafter to maturity, together with accrued interest. Bonds of series C shall be redeemable for the sinking fund at the principal amount thereof plus accrued interest.

The first mortgage shall provide for the payment on April 1 of each year, commencing with the second

April 1, following the effective date, while any series A, B or C bonds are outstanding, of an installment of sinking fund in an amount equal to one-quarter of 1 percent of the aggregate principal amount of series A, B and C bonds to be authenticated pursuant to the plan (excluding bonds pledged to secure the collateral-trust notes). The obligation of the new company to make such sinking fund payments shall be cumulative so that, if not earned in any year, the deficiency shall be made up in the next succeeding year or years. Such sinking fund installments shall be payable only out of available net income as hereinafter in Section O provided. Said sinking fund shall be applied to the retirement of the following new securities in the order stated, by purchase in the open market or by call for tenders at not exceeding the principal amount thereof plus accrued interest: (1) collateral-trust 10-year notes, (2) first-mortgage bonds, series A, (3) first-mortgage bonds, series B, and (4) first-mortgage bonds, series C. If on November 1 of any year the unexpended balance remaining in said sinking fund exceeds $50,000, the funds then in said sinking fund shall be applied on the next succeeding interest-payment date to the redemption of the above new securities listed in the above order. All notes and bonds acquired as in this paragraph provided shall be retained in the sinking fund and, for the purpose of the sinking fund, interest shall be paid thereon to the same extent as if the bonds (or notes) were outstanding, such payments of interest into the sinking fund on such bonds (or notes) to be additional to the regular sinking-fund payments.

First-mortgage bonds, in addition to those to be issued in the reorganization, may be authenticated from time to time subject to the approval of this Commission or of such regulatory body or tribunal as may have jurisdiction thereof as follows:

(a) In such amount as the reorganization managers or the board of directors of the new company may determine in order to enable the new company to preserve a suitable proprietary position in the Denver & Rio Grande Western Railroad Company now in reorganization; or

(b) to refund first-mortgage bonds (excluding bonds issued solely by way of pledge) or obligations secured by mortgage liens prior to the lien of the first-mortgage, or obligations secured by first-mortgage bonds to the extent so secured; or

(c) upon the deposit of new cash equal to the principal amount to be issued; or

(d) to provide for, or to reimburse the new company for not exceeding 75 percent of expenditures made after the effective date, but not more than 3 years prior to the date of such authentication (including expenditures for the acquisition or construction of new railroad equipment, free from other lien, but not including expenditures for the making of additions and betterments to equipment) which under the accounting rules of this Commission are properly chargeable to capital account; provided, however, that (1) except when bonds are authenticated in respect of new mileage (or securities representative thereof) or in respect of new equipment, the said 75 percent shall be applied to the net amount of said capital expenditures after deducting therefrom, to such extent and on such basis as may be specified in the first mortgage, credits to capital

account after the effective date; (2) if any first-mortgage bonds are authenticated, or cash deposited under the first mortgage is withdrawn to provide or reimburse for the acquisition of railroad equipment, a sinking fund shall be established (in addition to any other sinking fund then in effect for any series of first-mortgage bonds) payable in equal annual installments in an amount sufficient to retire (at par) within the expected efficient service life of such equipment (in no case to exceed 15 years) a principal amount of first-mortgage bonds equal to (a) the principal amount of bonds so authenticated, or (b) the amount of deposited cash so withdrawn, the payments into such sinking funds to have precedence over any other sinking funds established for any first-mortgage bonds, except any sinking funds established for the retirement of emergency bonds, which latter sinking funds shall have precedence over the equipment sinking funds; (3) if any property shall be acquired subject to existing liens, the amount of additional first-mortgage bonds issuable therefor, or issued to refund prior lien obligations thereon, together with the aggregate amount of existing liens to which such property is subject, shall not exceed 75 percent of the net cost thereof, including as part of such cost the amount of such existing liens whether or not the indebtedness secured thereby is assumed by the new company; and (4) no bonds shall be issued on the basis of the acquisition of equipment under equipment trust obligations or obligations for the deferred or serial payment of the purchase price for equipment, or on the basis of the retirement of any such obligations; or

(e) bonds, hereinafter referred to as "emergency bonds", may be issued and sold or pledged

without regard to any of the restrictions contained in the plan, except those in this clause (e) upon resolution adopted by the vote of two-thirds of the board of directors that funds are needed and cannot be raised except by sale, exchange or pledge of the bonds applied for, provided that (1) the emergency bonds shall constitute a revolving fund and the new company shall agree to retire and restore to the treasury all emergency bonds as soon as practicable; (2) all of the emergency bonds shall be redeemable, and if any emergency bonds are not retired within 2 years from the date of issue, there shall be an annual sinking fund therefor, equal to 10 percent of the amount thereof, payable as hereinafter in section O provided; and (3) the amount of emergency bonds, including emergency bonds pledged or held in the treasury of the new company, shall not exceed at any one time $15,000,000 or 2 years' fixed charges, whichever sums shall be the greater.

Subject to the foregoing provisions with respect to emergency bonds and to first-mortgage bonds authenticated or withdrawals of cash deposited under the first mortgage to provide or reimburse for the acquisition of equipment, (1) the first mortgage shall provide that the board of directors of the new company may create an additional sinking fund or sinking funds for the retirement of bonds of series other than series A, B, and C; (2) any such sinking fund or sinking funds may be subordinated to or may rank equally and ratably with, but not prior to the sinking fund for the bonds of series A, B and C; and (3) the aggregate amount of all annual installments payable in respect of such additional sinking fund or sinking funds shall

not exceed one-half of 1 percent of the greatest principal amount of first-mortgage bonds, (other than series A, B and C) theretofore at any one time outstanding.

The first mortgage shall contain a covenant to the effect that no bonds (other than those to be authenticated under the plan and emergency bonds) will be authenticated and delivered unless (a) the new company shall have contracted forthwith to sell or pledge such bonds, and (b) the board of directors of the new company shall by resolution adopted by two-thirds of the entire number of directors, have determined that, in the opinion of the board, taking into account market and other relevant conditions at the time, it is undesirable or impracticable to provide the amount of money needed (1) by the sale of general-mortgage bonds having a suitable maturity, at a price which would give a yield to maturity of 5 percent or less, or (2) by the sale of preferred stock at a price which would give a current dividend return of 6 percent or less, or (3) by the sale of common stock of either class at a price which would give a current dividend return of 6 percent or less, based on the regular dividend rate then in effect, or, if no regular rate is in effect, on the average rate at which dividends have been paid during the past 12 calendar month.

The first mortgage shall provide, within conditions and limits to be therein prescribed, for the modification and alteration thereof and of any or all supplements thereto and of the rights and obligations of the new company and of the holders of the bonds issued thereunder, at any time, by the concurrent action of the new company and of the holders of not less than

66⅔ percent of the aggregate principal amount of bonds then outstanding affected by such change or modification; and such modification or alteration may specifically include procedural provision for ascertaining available net income without the maintenance of separate books of account in the event that the new company shall be merged into or consolidated or unified with another corporation, whether or not a subsidiary of the new company; provided that no change or modification shall (a) alter or impair the obligation of the new company to pay the principal of, or interest on, any bond at the time and place and at the rate and in the currency provided therein, or (b) permit the creation by the new company of any mortgage or lien in the nature of a mortgage ranking prior to, or on a parity with the lien of the first mortgage, except as in the new first mortgage otherwise expressly provided. Notwithstanding the limitation in clause (a) of this paragraph the new first mortgage shall contain a provision, in such form and substance as may be determined by the reorganization managers with the approval of the court, that the mortgage may at any time, with the approval of this Commission or such other regulatory body as may at the time have jurisdiction in the premises, be modified by the concurrent action of the reorganized company and of the holders of not less than 75 percent in principal amount of all bonds of the mortgage outstanding at the time of such vote so as to postpone the time or times of payment of any fixed interest or accumulations of contingent interest, either before or after the interest is due, or the principal of any or all series of bonds of the mortgage, either before or after maturity, whether bearing fixed or contingent interest which at such time may be

outstanding, provided that the payment of the principal of the bonds may not be postponed for a longer period than 20 years from the maturity date designated in the bonds and that the maturity of interest on the bonds may not be postponed for a longer period than 5 years but in no event beyond the maturity date of the principal of the bonds designated in the bonds unless such maturity be postponed, in which event the maturity of interest on the bonds may not be postponed beyond the extended maturity date of the principal.

The first mortgage shall contain a covenant that the new company will at all times keep the mortgaged property supplied with such amount of motive power, rolling stock and equipment (on which the first mortgage shall constitute a paramount lien subject only to such liens in the nature of purchase money liens as may be permitted by the terms hereof), and maintain the same in such condition as may be necessary for the efficient and economical operation of the mortgaged property.

J. **The collateral trust notes.**—The collateral-trust notes shall mature 10 years after their date, shall bear fixed interest at the rate of 3½ percent per annum (or such other rate as may in the opinion of the reorganization managers be necessary to permit the sale of these notes at par), payable semiannually, and shall be redeemable as a whole or in part on any interest payment date prior to maturity on 30 days' notice and at any other time on 60 days' notice at their principal amount together with accrued interest. The notes shall be issued under and secured by a trust indenture under which there shall be deposited and pledged with

the indenture trustee, as security for the notes, new first-mortgage bonds, series C, equal in principal amount to 125 percent of the principal amount of said notes from time to time outstanding. All first-mortgage bonds, series C, released from the lien of said indenture shall be canceled.

Prior to consummation of the plan, the reorganization managers shall use their best efforts to arrange for the underwriting of the new collateral-trust notes. If such an underwriting is arranged, each person who is entitled to receive notes of said issue shall be entitled, at his election, either (a) to take said notes or (b) to direct the delivery of his notes to or for the account of the underwriter, at a price which shall not be less than par per $1,000 note plus accrued interest to a date to be fixed by the reorganization managers. The manner of making such election, the time within which it shall be made and the terms of the underwriting agreement shall be determined by the reorganization managers, subject to the approval of the court.

K. **Plaza-Olive Building mortgage.**—Plaza-Olive Building first-mortgage bonds shall be limited in authorized principal amount to an amount equal to the principal amount of Plaza-Olive Building first-mortgage 6 percent bonds outstanding immediately prior to consummation of the plan. Notwithstanding the provisions of section B, these bonds shall be dated as of the date of consummation of the plan, shall mature 15 years after their date, and shall be redeemable as a whole or in part on any interest payment date on thirty days' notice, and at any other time on sixty days' notice, at par plus accrued interest. They may be issued only in exchange, par for par, for presently

outstanding Plaza-Olive Building 6 percent first-mortgage gold bonds as hereinafter provided.

The new bonds shall bear fixed interest at the rate of 3 percent per annum, payable semiannually on the 1st days of July and January. They shall in addition bear contingent interest as hereinafter set forth.

The bonds shall be secured by a mortgage to a trustee, which shall be a bank or trust company doing business in St. Louis, Missouri. The mortgage shall constitute a first lien upon the same property as that now subject to the lien of the mortgage securing the outstanding Plaza-Olive Building 6 percent first-mortgage gold bonds, and with respect to such property shall be prior to the lien of the mortgage securing the first-mortgage bonds of the new company.

Income available for contingent interest and for the sinking fund hereinafter provided for shall be deemed to be that amount which shall remain after deducting from the annual gross earnings and income of the property subject to the mortgage securing these bonds the following items and no others: (a) all operating and administrative expenses relating to said property, including reasonable compensation and expenses of the mortgage trustee, commissions of renting agents, insurance premiums and non-capital repairs and maintenance; (b) all taxes and assessments levied against said property; (c) all income and excess profits taxes allocable to the earnings and income of said property as hereinafter defined; (d) depreciation at an annual rate of 2 percent of the book value of the building located on said property; and (e) the annual amount of fixed interest payable with respect to these bonds.

The amount of income and excess profits taxes allocable to the earnings and income of said property shall be deemed to be either (1) the amount which would be payable as such taxes were the property subject to this mortgage operated under independent corporate ownership, or (2) the proportion of all such taxes paid by the new company which the taxable income of the property subject to this mortgage bears to the entire taxable income of the new company, whichever is the lower amount.

For the purpose of computing income available for contingent interest and sinking fund there shall be credited to the gross earnings and income of said property an amount equal to the reasonable rental value of any space occupied by the new company on said property.

One-half of income available for contingent interest and sinking fund for any calendar year, beginning with the date of the new bonds, shall be paid to the mortgage trustee on the 1st day of April of the next succeeding year as a sinking fund and shall be used for the retirement of bonds of this issue. The other one-half of such income shall be applied to the payment of contingent interest on said bonds up to a maximum of 2 percent. Contingent interest shall be payable on the 1st day of April of each year. Any additional income remaining after payment of the maximum of 2 percent contingent interest shall also be paid to the mortgage trustee on the 1st day of April of each year as a sinking fund and used for the retirement of bonds of this issue.

The depreciation reserve provided for in the foregoing subparagraph (d) in this section K shall be

used to pay for additions and betterments to the building located on the property subject to the mortgage securing these bonds. Any amounts remaining in the depreciation fund not so utilized as of the end of each calendar year shall be paid to the mortgage trustee within 3 months after the close of the year as a sinking fund and shall be used by said trustee for the retirement of bonds of this issue.

Sinking fund moneys held by the mortgage trustee on the 1st day of April of each year shall be used by the trustee within 6 months thereafter to retire bonds of this issue by purchase pursuant to tenders from bondholders or in the open market, at the lowest available prices, provided that no such purchase shall be made at a price exceeding par. In the event that at the expiration of the aforesaid 6 months' period there shall remain of the funds on deposit in the sinking fund an amount in excess of $10,000, the mortgage trustee shall forthwith use such unexpended balance to retire bonds of this issue by redemption by lot at par and accrued interest. Any sinking fund moneys not used as aforesaid may be used by the mortgage trustee, in its discretion, to retire bonds of this issue by purchase in the open market at any time at the lowest available prices.

The new company shall have the right to tender bonds to the mortgage trustee for the sinking fund at a price not exceeding the cost to it of the bonds so tendered; provided, however, that bonds of this issue received by the Western Coal & Mining Company, a wholly owned subsidiary of The Missouri Pacific Railroad Company, in exchange for the Plaza-Olive Building 6-percent first mortgage gold bonds now held by

it in the principal amount of $8,500 shall not be eligible for tender to the sinking fund and shall not be redeemed so long as any other bonds of this issue remain outstanding in the hands of the public, and shall carry provision to this effect on their face.

The new company shall keep separate books and records of the income and expenses of operation of the property subject to the mortgage securing these bonds, which books and records shall at all times be open to the inspection of the mortgage trustee or its agents. The new company shall furnish to the mortgage trustee annually a statement showing the results of the operation of said property for each 12 months during the term of said bonds, which statement shall specifically show the amount of net income, if any, available for contingent interest and sinking fund.

The mortgage trustee may, at its option, require an audit by a certified public accountant of the accounts of the new company with respect to the operation of the property subject to the mortgage securing these bonds for any calendar year. The cost of any such audit shall be deemed to be an operating expense of such property within the meaning of the foregoing subparagraph (a) of this section K.

The property subject to the mortgage securing these bonds shall, except as hereinafter otherwise provided, be managed by such person or real estate firm as shall be appointed by the new company with the approval of the mortgage trustee. In the event the manager appointed by the new company shall not be approved by the mortgage trustee, the new company shall name a panel consisting of three qualified real estate men or firms and the mortgage trustee shall select a man-

ager from such panel. The cost of employing such manager shall be deemed to be an operating expense of the property within the meaning of the foregoing subparagraph (a) of this section K. The mortgage trustee may in its discretion consent to the operation of the property by the new company without the appointment of a manager as aforesaid.

The court has heretofore authorized payments to the holders of Plaza-Olive Building 6-percent, first-mortgage gold bonds. Further payments may hereafter be authorized from time to time by the court. All such payments out of the net income of the property subject to the mortgage securing said bonds for the period since October 1, 1936, shall be treated as having been applied in accordance with the following provisions:

(1) Net income for the period from October 1, 1936, to December 31, 1937, shall be applied to the payment of interest for such period at the rate of 3 percent per annum. One-half of any balance of such net income shall be applied to the payment of additional interest for such period, provided that such additional payment shall not exceed interest at the rate of 2 percent per annum. The remainder of such net income shall be applied to the sinking fund.

(2) Net income for the period subsequent to December 31, 1937, shall be applied to the payment of interest and sinking fund to the extent that the same would have been paid on the new bonds herein provided for had such new bonds been issued on and dated January 1, 1938. Such sinking fund payments shall be deposited with the present mortgage trustee.

Sinking-fund moneys deposited with the present mortgage trustee in accordance with the foregoing

sinking fund provisions shall be used by said trustee to retire presently outstanding Plaza-Olive Building 6-percent first-mortgage gold bonds by purchase, at the lowest available prices. Any such sinking fund moneys in the possession of the present mortgage trustee at the date of consummation of the plan shall be paid to the trustee under the new mortgage and used by it in accordance with the foregoing provisions of this section K, relating to the application by the mortgage trustee of sinking fund moneys.

For the purposes of the foregoing provisions of this section K relating to the disposition of net income, the term "net income" shall be deemed to mean the balance remaining after deducting from the gross earnings and income of the property subject to the mortgage securing the presently outstanding Plaza-Olive Building 6-percent first-mortgage gold bonds the items specified in the foregoing subparagraphs (a), (b), (c) and (d) of this section K.

In the event any payments are made hereunder with the approval of the court out of net income for any period subsequent to the date of the new bonds herein provided for, the amount of interest and sinking fund payments required under the new bonds shall be reduced to the extent of such payments.

L. **Exclusion of Plaza-Olive income and expenses in determining available net income.**—In determining "available net income" and income available for capital expenditures fund, sinking funds, contingent interest and dividends on stock of the new company as hereinafter provided, all income and expenses of the property subject to the mortgage securing the Plaza-Olive Building first-mortgage bonds shall be excluded so long as any of said bonds remain outstanding.

M. The new general-mortgage bonds.—The general-mortgage bonds shall be issuable in series, the total authorized issue to be unlimited in principal amount. Series A bonds shall be limited in authorized principal amount to the amount necessary to carry out the terms of the plan. They shall mature 65 years after their date, and shall bear contingent interest at the rate of 4½-percent per annum, payable annually on the first day of April in each year (beginning on the second April 1 following the effective date) and shall be redeemable as a whole or in part on any interest payment date on 30 days' notice and at any other time on 60 days' notice, at 100 percent of their principal amount plus (a) all unpaid accumulated interest to the end of the calendar year next preceding the date of redemption and up to the maximum limit of accumulation hereinafter stated and (b) interest at the rate of 4½ percent per annum from the end of such calendar year to the redemption date.

Interest on the bonds of series A accruing for each calendar year shall, up to the limits of accumulation hereinafter specified, become owing as a debt on December 31 in such year, but shall be payable on April 1 in the next succeeding year or thereafter as provided below. Such interest shall be mandatorily payable, except as herein provided, only to the extent that the available net income of the new company is sufficient for the payment thereof upon the application of such available net income as hereinafter provided. All interest not paid because of the limitation in the preceding sentence shall accumulate up to the maximum accumulation of 13½ percent, but not beyond. Interest owing as a debt in a given year but which is paid on the interest payment date in the next succeeding year

shall not be included in calculating the 13⅓ percent. Upon the maturity of the series A bonds, whether by acceleration or otherwise, all unpaid accumulated interest to the end of the calendar year next preceding the date of maturity up to the specified maximum plus interest at the rate of 4⅓ percent per annum for the period from the end of such calendar year to the date of maturity shall be paid, whether or not earned. All interest after maturity shall be a fixed obligation.

Series B bonds shall be limited in authorized principal amount to the amount necessary to carry out the terms of the plan. They shall mature 75 years after their date, shall bear contingent interest at the rate of 5 percent per annum, payable annually on the first day of April in each year (beginning on the second April 1 following the effective date), and shall be redeemable as a whole or in part on any interest payment date on 30 days' notice, and at any other time on 60 days' notice, at 100 percent of their principal amount, together with interest, whether or not earned, at the rate of 5 percent per annum from January 1 of the calendar year next preceding the calendar year in which redemption occurs, less any interest theretofore paid in the calendar year in which redemption occurs.

Interest on bonds of series B for each calendar year shall be mandatorily payable, but only to the extent that available net income of the new company is sufficient for the payment thereof upon the application of such available net income as hereinafter provided; and such interest to the extent mandatorily payable shall become owing as a debt on December 31 in such calendar year. Upon the maturity of the bonds of series B, whether by acceleration or otherwise, there shall be

payable thereon one year's interest, whether earned or not, at the rate of 5 percent per annum, less any interest theretofore paid in such year. All interest after maturity shall be a fixed obligation.

The general mortgage bonds of all series shall be secured by a mortgage which shall be a lien upon all of the properties and assets that shall at the time be subject to the new first mortgage, subject, however, to said first mortgage.

The general mortgage shall provide for an annual sinking fund payment for series A bonds to be made from available net income as hereinafter provided in Section O with respect to the determination and application of available net income, in an amount equal to one-half of 1 percent of the aggregate principal amount of series A bonds to be authenticated pursuant to the plan or such amount as shall be applicable for such purpose, whichever is less. Such payments shall be made on April 1 in each year commencing with the second April 1 following the effective date. The series A sinking fund shall be applied from time to time to the retirement of series A bonds by purchase in the open market or by call for tenders at not exceeding the redemption price. If on January 31 of any year the unexpended balance remaining in said sinking fund exceeds $50,000, the cash in said sinking fund shall be applied on the next succeeding interest payment date to the redemption of series A bonds. All bonds of series A so purchased or redeemed shall be canceled.

The general mortgage shall also provide for an annual sinking fund payment for series B bonds to be made from available net income as hereinafter pro-

vided in section O with respect to the determination and application of available net income, in an amount equal to one-half of 1 percent of the aggregate principal amount of series B bonds to be authenticated pursuant to the plan, or such amount as shall be applicable for such purpose, whichever is less. Such payments shall be made on April 1 in each year commencing with the second April 1 following the effective date. The series B sinking fund shall be applied from time to time to the retirement of series B bonds by purchase in the open market or by call for tenders at not exceeding the redemption price. If on January 31 of any year the unexpended balance remaining in said sinking fund exceeds $50,000, the cash in said sinking fund shall be applied on the next succeeding interest payment date to the redemption of series B bonds. All bonds of series B so purchased or redeemed shall be canceled.

Subject to the provisions hereinafter contained with respect to the determination and application of available net income, the general mortgage shall provide in substance that bonds, other than series A and series B, may be issued from time to time without limit as to aggregate amount, in one or more series, bearing such date or dates, having such maturity or maturities (which must be later than the maturity of series A bonds except when issued to cover the cost of equipment as herein provided), in such denominations, bearing contingent interest at such rates and containing such provisions in regard to accumulation of interest, redemption, conversion, taxes, place or places and money or moneys of payment, registration and sinking funds, and having such other charactertistics as

may be prescribed by the board of directors of the new company at the time of issue. The lien of the general mortgage shall secure all bonds issued thereunder equally and ratably. No interest shall be mandatorily payable on general-mortgage bonds of any series, (except at or after maturity or redemption) except out of available net income as hereinafter provided in section O.

Bonds, other than the bonds of series A and series B hereinbefore authorized, may be issued under the general mortgage only for the following purposes: (1) to refund general-mortgage bonds or mortgage obligations which may at the time be a lien on any part of the system prior to the lien of the general mortgage, and (2) for the purposes and subject to the restrictions contained in this plan in respect of the issue of additional first-mortgage bonds, to the extent that first-mortgage bonds are not issued for such purposes; provided, however, that no emergency bonds may be issued under the general mortgage.

No general mortgage bonds, other than those of series A and series B, may be authenticated and delivered unless (a) the new company shall have contracted forthwith to sell or pledge such bonds, and (b) the board of directors of the new company, by resolution adopted by two-thirds of the entire number of directors, shall have determined that in the opinion of the board, taking into account market and other relevant conditions at the time, it is undesirable or impracticable to provide the amount of money needed (1) by the sale of preferred stock at a price which would give a current dividend return of 6 percent or less, and (2) by the sale of common stock of either

class at a price which would give a current dividend return of 6 percent or less, based on the regular dividend rate then in effect, or, if no regular rate is in effect, on the average rate at which dividends have been paid during the last 12 calendar months.

The general mortgage shall provide, within conditions and limits to be therein prescribed, for the modification and alteration thereof, and of any or all supplements thereto, and of the rights and obligations of the new company and of the holders of bonds issued thereunder, at any time by the concurrent action of the new company and of the holders of not less than two-thirds in aggregate principal amount of the bonds affected by such modification or alteration; and such modification or alteration may specifically include procedural provision for ascertaining available net income without the maintenance of separate books of account in the event that the new company shall be merged into or consolidated or unified with another corporation, whether or not a subsidiary of the new company; provided, however, that no such change or modification shall (a) alter or impair the obligation of the new company with respect to the determination and application of income available for interest on the general-mortgage bonds (except as hereinabove specifically provided) or with respect to payment of the principal of or accumulated interest on any general-mortgage bond at the time and place, at the rate and in the currency provided in the general mortgage and such bond without the consent of the holder of such bond or (b) permit the creation by the new company of any mortgage or lien in the nature of a mortgage ranking prior to or on a parity

with the lien of the new general mortgage except as in said mortgage otherwise expressly provided.

The general mortgage shall contain provisions similar to those to be contained in the first mortgage with respect to the use free from the mortgage of any securities subject thereto in effecting a merger or consolidation of the issuer of such securities into the Missouri Pacific system. Notwithstanding the provisions of subdivision (a) of the next preceding paragraph hereof, the new general mortgage shall contain a provision, in such form and substance as may be determined by the reorganization managers with the approval of the court, that the mortgage may at any time, with the approval of this Commission or such other regulatory body as may at the time have jurisdiction in the premises, be modified by the concurrent action of the reorganized company and of the holders of not less than 75 percent in principal amount of all bonds of the mortgage outstanding at the time of such vote so as to postpone the time or times of payment of any fixed interest or accumulations of contingent interest, either before or after the interest is due, or the principal of any or all series of bonds of the mortgage, either before or after maturity, whether bearing fixed or contingent interest which at such time may be outstanding, provided that the payment of the principal of the bonds may not be postponed for a longer period than 20 years from the maturity date designated in the bonds and that the maturity of interest on the bonds may not be postponed for a longer period than 5 years but in no event beyond the maturity date of the principal of the bonds designated in the bonds unless such maturity be postponed

in which event the maturity of interest on the bonds may not be postponed beyond the extended maturity date of the principal.

N. **Limitation on the amount of pledged first-mortgage and general-mortgage bonds.**—The first mortgage and the general mortgage each shall contain a covenant substantially to the effect that the excess of the aggregate principal amount of all bonds issued under such mortgage and under pledge at any time over the principal amount of all indebtedness so secured shall not exceed 10 percent of the aggregate principal amount of all bonds issued under such mortgage then authenticated and uncanceled. This restriction shall apply to both mortgages, but shall be applied to each independently.

Miscellaneous provisions of mortgages, indentures, etc.—Each of the mortgages, indentures, certificates of incorporation and other similar instruments herein provided for shall contain such provisions, in addition to those herein specified, as may be necessary or proper adequately to protect the holders of the securities issued under such instruments without unduly restricting the new company.

In the event the new company shall be merged or consolidated or unified with any other corporation, whether or not a subsidiary of the new company, then by vote or consent of the holders of a majority in par value of the preferred stock and a majority of the shares of common stock then outstanding, procedural provision may be made for ascertaining available net income without the maintenance of separate books of account, and such provision shall be binding on all holders of stock of such classes.

The new first mortgage and the new general mortgage may contain such provisions as the reorganization managers may approve either (1) permitting the new company, while it is not in default in the performance of its obligations under said mortgages respectively and during any period of grace therein specified, to use and dispose of, to the same extent as if not subject to the lien of such mortgages respectively, cash, temporary cash investments, tools, supplies and other current items or (2) excluding such property from the liens of said mortgages.

If the property of the Austin Dam & Suburban Railway Company and the International shall be transferred to the reorganized International there shall be a new first mortgage constituting a first lien, subject only to the liens of equipment trust obligations, if any, on all properties and assets, including securities, owned by the reorganized International upon consummation of the plan. The mortgage shall contain after-acquired property clauses substantially similar to those which shall be included in the first mortgage of the new company. The bonds to be issued in reorganization under the first mortgage of the reorganized International shall be limited to approximately $23,415,000 in principal amount, shall bear contingent interest at the rate of 5 percent per annum, shall be dated as of the effective date of the plan and shall mature 75 years after their date. The new reorganized International first mortgage shall contain such provisions with respect to the determination and application of available net income of the reorganized International and other matters as shall be consistent with the provisions of this plan and as

may be necessary or proper to protect the security holders of the new company without unduly restricting the reorganized International and the new company. The new first mortgage of the reorganized International may contain provisions authorizing the issuance of additional first-mortgage bonds from time to time for purposes and subject to restrictions substantially similar to those contained in the plan with respect to the issue of additional first-mortgage bonds of the new company.

O. **Available net income and capital expenditures fund.**—Available net income shall be determined for each calendar year beginning with the year in which the effective date falls. Available net income for each such calendar year shall be determined by deducting all fixed charges of the new company and its wholly owned railway subsidiaries accruing during such calendar year from the consolidated income of the new company and its wholly owned railway subsidiaries available for fixed charges for such calendar year (determined in accordance with accounting rules of this Commission or other Federal authority having jurisdiction in the premises at the time in force, or, to the extent not governed by such accounting rules, in accordance with sound accounting practice); provided, however, that available net income for any period after the effective date and prior to the consummation of the plan shall be computed as if the plan had been consummated on the effective date.

Available net income shall be ascertained for each such calendar year, as the accounts shall be stated on the books of the new company during such calendar year, without adjustments, except that (1) if in

respect of any calendar year the available net income is a deficit, the amount of such deficit shall be carried forward and be deducted in determining available net income for the succeeding calendar year or calendar years until such deficit (or accumulated or remaining deficits) be extinguished by earnings which, in the absence of such deficit or deficits, would be available net income; (2) any adjustment necessary to correct the income account of any prior year shall be made by appropriate entries which may either be made in the accounts of the current year and/or in the discretion of the board of directors of the new company and subject to the approval of this Commission or such other governmental agency as may at the time have jurisdiction over the accounts of the new company, may be made in whole or in part in the accounts of any subsequent year or years, and any such debits or credits to adjust income in prior years shall be treated as income items for the year in which entered on the books whether cleared through income or profit and loss accounts; and (3) in computing such available net income no amounts shall be deducted for retirements of nondepreciable property.

Available net income for each calendar year shall be applied to the following purposes and in the following order:

(1) **Capital expenditures fund.**—To the creation of a capital expenditures fund, the amount to be set aside in the fund in each such calendar year, except as hereinafter provided, to be equal to 2½ percent of the consolidated total railway operating revenues of the new company and its wholly owned railway subsidiaries for such calendar year less depreciation of roadway and structures

charged against income in such calendar year to the extent that the amount of such depreciation is available for the purpose of the capital expenditures fund, plus the amount, if any, by which available net income for the last preceding calendar year shall have been less than the maximum amount permitted for the capital expenditures fund for such calendar year by the preceding provisions of this paragraph (1). The capital expenditures fund shall be applied, as shall be from time to time determined by the board of directors of the new company, either to provide for or to reimburse the treasury of the new company for all or any part of the net charges to the investment account (as defined under this Commission's Classification of income, profit and loss, and general balance sheet accounts for steam roads, accounts No. 701, Investment in road equipment, 702, Improvement on leased railway property, and 705, Miscellaneous physical property) of the new company not otherwise financed, or not otherwise provided for, with proper adjustment for use by the new company, of secondhand material donations and other items not involving a cash outlay, or the equivalent thereof. Any portion of the fund not required for the foregoing purposes may be applied to the retirement of fixed interest funded debt, either by purchase or redemption of securities, representing such debt, or may be applied to the payment of interest on fixed interest debt in any year in which it is not earned, but no contingent charges or dividends thereafter shall be paid until the capital fund has been reimbursed for the funds used for the payment of fixed interest. To the extent that the capital expenditures are so provided for or reimbursed out of the capital expenditures fund, the new company shall not thereafter have the right to issue any

bonds or other evidences of indebtedness to capitalize or to reimburse it for such expenditures; provided, however, that such expenditures, if for purposes for which first-mortgage bonds or general-mortgage bonds may be issued, may, within such limits, if any, as may be specified in the first mortgage or the general mortgage, be used to supply in whole or in part the excess of capital expenditures required to be certified under either such mortgage over the principal amount of the bonds that may be issued under the terms thereof. Any moneys in the capital expenditures fund which shall not be applied as above provided, during the calendar year in which they were credited to such fund, shall be carried over in such fund to the next calendar year in addition to the regular annual credit to such fund.

(2) **First-mortgage sinking fund.**—Any then remaining available net income for any calendar year shall, to the extent required, be applied on the next succeeding sinking-fund payment date to the payment of the sinking fund installment or installments on any first-mortgage bonds, including emergency bonds, if any such sinking fund installments are required to be paid in respect of emergency bonds, and to payment into the sinking fund of the interest on first-mortgage bonds (or collateral-trust notes) theretofore purchased or redeemed out of the sinking fund and retained in the sinking fund. The sinking fund installment for emergency bonds, if any is required, shall be preferred over any other sinking fund installment. Any special sinking fund installments in respect of first-mortgage bonds issued for acquisition of equipment or in respect of withdrawals of cash deposited under the first-mortgage to provide or reimburse for the acquisition of equipment shall be preferred over any other

sinking funds established for any first-mortgage bonds, except for the retirement of emergency bonds. Otherwise all the first-mortgage sinking fund installments shall be on a parity except that, as provided in section I hereof, sinking funds for series other than series A, B and C may be subordinated.

(3) **General-mortgage, series A, interest.**—Any then remaining available net income for any calendar year shall be applied to the payment on the next succeeding interest payment date of interest on the then outstanding general-mortgage bonds, series A, and any accumulations thereof. No interest need be paid if it would amount to less than one-quarter of 1 percent. Any excess available for such interest but not paid because of the foregoing provision shall be reserved and added to the income available for interest on the general-mortgage bonds, series A, for the next succeeding calendar year.

(4) **General-mortgage, series A, sinking fund.**—Any then remaining available net income for any calendar year shall to the extent required be applied on the next succeeding sinking fund payment date to the payment of the sinking fund installment in respect of general-mortgage bonds, series A.

(5) **Interest on other general-mortgage bonds.**—Any then remaining available net income for any calendar year shall be applied to the payment on the next succeeding interest payment date of the interest, on the then outstanding general-mortgage bonds of any series other than series A, without preference of the bonds of any such series over the bonds of any other such series. No interest need be paid if it would amount to less than one-quarter of 1 percent. Any excess avail-

able for interest but not paid because of the foregoing provision shall be reserved and added to the income available for interest on general-mortgage bonds other than series A for the next succeeding calendar year.

(6) **General-mortgage sinking fund.**—Any then remaining available net income for any calendar year shall to the extent required be applied on the next succeeding sinking fund payment date or dates to the payment of the sinking fund installment or installments in respect of any series of general-mortgage bonds other than series A without preference of the installment for any such series over the installment for any other such series, unless at the time of creation of any series other than series A and series B the sinking fund for such series shall be subordinated.

(7) **Preferred stock dividends.**—Any then remaining available net income for any calendar year shall be applied, when and as declared by the board of directors of the new company, to the payment of dividends on the preferred stock and any accumulations thereof in accordance with the applicable provisions of the certificate of incorporation of the new company and the resolutions establishing one or more series of preferred stock.

(8) **Common stock dividends, retirement fund and other corporate purposes.**—Any then remaining available net income for any calendar year may be applied to any proper corporate purpose, including dividends on the classes of common stock of the new company in the order of their priority and the retirement fund for retirement of general-mortgage bonds, as hereinafter provided.

P. Preferred stock.—The amount of the new preferred stock to be originally authorized shall be fixed by the reorganization managers and there shall be issued upon reorganization an amount of preferred stock, series A, sufficient to carry out the plan, viz., approximately 577,170 shares of the par value of $100 each. Additional preferred stock of any other series may, subject to conditions hereinafter in this section P stated, be authorized and issued from time to time for any proper corporate purpose.

The new preferred stock, series A, shall entitle the holders thereof in preference to the holders of the common stock to receive dividends, when and as declared by the board of directors, at the rate of 5 percent per annum out of the available net income for any calendar year. Dividends on the preferred stock, series A, shall be cumulative in respect of each calendar year but only to the extent that there shall be available net income for such calendar year which could be distributed by way of dividend on the preferred stock, series A, under the provisions of this plan respecting the determination and application of available net income. No dividend shall be paid on the common stock in any calendar year unless all accumulated unpaid dividends for all prior calendar years shall have been paid or declared and set apart for payment on the preferred stock, series A, and, if the dividend on the common stock shall be payable out of available net income for the year in which payment is made, unless full dividends at the rate of 5 percent per annum for such year shall also have been paid or declared and set apart for payment on the preferred stock, series A.

In the event of the dissolution, winding up or liquidation of the new company, the holders of preferred stock, series A, shall be entitled to receive out of the assets of the new company $100 per share, together with an amount equal to all accrued, unpaid and accumulated dividends before any distribution shall be made to the holders of common stock.

The preferred stock, series A, shall be redeemable in whole or in part at any time on 60 days' notice at its par value, plus an amount equal to dividends at the rate of 5 percent per annum, whether or not earned, from the preceding January 1 to the redemption date less any dividends paid for that period, plus all accumulated dividends for preceding years. The holders of preferred stock, series A, shall have no preemptive right to subscribe to any shares of stock of any class or to securities convertible into stock of any class.

The certificate of incorporation of the new company shall provide in substance that the new company shall not, without the vote or consent of the holders of at least two-thirds in par value of the outstanding preferred stock, series A, (a) amend the certificate of incorporation of the new company or any certificate amendatory thereof or supplemental thereto so as to alter or change the preferences and voting rights to which the holders of said stock are entitled in accordance with the provisions of the plan, (b) create any additional stock ranking either as to assets or dividends in priority to or on a parity with the new preferred stock, and (c) issue any of the shares of preferred stock which shall be originally authorized for

any purpose other than to carry out the plan or for purposes for which new first-mortgage bonds or new general-mortgage bonds might otherwise be issued.

Each share of preferred stock shall entitle the holder thereof to one vote.

Holders of preferred stock, voting as a class, shall have the right to elect not less than two directors after default of payment of the equivalent of six quarterly dividends, and the affirmative vote of the holders of at least two-thirds of the preferred stock shall be required as a prerequisite to any charter or bylaw amendment altering materially any existing provision of such preferred stock.

Subject to the foregoing provisions of this section P, the certificate of incorporation shall permit the authorization and issuance of additional preferred stock of such series and amounts, with such par value and entitled to such dividends, voting rights, priority, redemption, conversion and other special privileges and restrictions as the board of directors may determine in its discretion.

Q. New common stock, class A and class B.—The common stock of the new company shall be divided into two classes, one of which shall be designated as class A and the other of which shall be designated as class B, all of which shall be without par value. The number of shares in each class to be authorized in the certificate of incorporation of the new company shall be fixed by the reorganization managers in relation to the requirements of the plan and the number of shares in each class to be originally issued shall be in the amounts necessary to carry out the plan. The cer-

tificate of incorporation shall permit the authorization from time to time of additional shares of common stock of either class with the consent of the holders of not less than a majority of the number of shares of common stock of each class at the time outstanding and shall permit the board of directors in its discretion to authorize the issuance of such additional shares of common stock for any lawful purpose.

In any calendar year, no dividends on common stock, class B, shall be paid unless dividends of $5 per share shall have been paid or declared and set apart for payment on the common stock, class A, and after $5 per share has been paid or declared and set apart for payment on the common stock, class A, and on the common stock, class B, all further dividends in such calendar year shall be declared and paid on common stock, class A, and common stock, class B, share and share alike.

In the event of the dissolution, winding up or liquidation of the new company, the holders of common stock, class A, shall be entitled to receive out of the assets of the new company $100 per share before any distribution is made to the holders of common stock, class B. Thereafter the holders of common stock, class B, shall be entitled to receive $100 per share, and thereafter any further distributions on the common stock out of the assets of the new company shall be made equally and ratably on all outstanding shares of common stock of both classes.

Each share of common stock of each class shall entitle the holder thereof to one vote.

Voting trust.—A voting trust shall be created in order to assure a stable, experienced and impartial

management which will be free to act in the general interest without allegiance to any particular class of security holders during the crucial period which will follow the consummation of the reorganization and the termination of the war. All of the preferred stock, series A, and the new common stock, class A and class B, issued in the reorganization and all other voting stock thereafter issued by the new company during the continuance of said voting trust shall be deposited in said voting trust and voting trust certificates will be issued therefor. All references in the plan to stock of the new company shall, unless the context otherwise requires, be deemed to include voting-trust certificates for the same.

The voting trustees shall be three in number, all to be designated by the court, one of whom shall be a citizen of Missouri, and another a citizen of Texas. The reasonable expenses of such voting trustees, including counsel fees, shall be paid by the new company. Such voting trust shall continue (1) for 5 years from the date of the consummation of the plan, or (2) until available net income, determined and applied as hereinbefore in section O provided, shall have been sufficient, for a period of three consecutive calendar years commencing not earlier than the January 1 nearest to the date of consummation of the plan, to provide full interest and sinking fund requirements on all outstanding general-mortgage bonds, series A and series B, plus the sum of $3,600,000 per year, whichever period shall be the shorter. The voting-trust agreement shall provide that, if any vacancy shall occur among the voting trustees, such vacancy shall be filled by a majority of the remaining voting trustees.

Warrants.—The new warrants shall entitle the holders thereof at any time within 10 years after the date of consummation of the plan to purchase at $100 per share, that aggregate number of shares of common stock, class B, as shall be necessary to carry out the plan. The exercise of warrants shall operate as a purchase of common stock, class B, held in escrow, as hereinafter provided. The new warrants shall not entitle the holders thereof to vote, to receive dividends, to any preemptive right to subscribe to shares of stock in the new company of any class or to securities convertible into shares of stock of the new company of any class, or to any of the rights of stockholders of the new company.

Escrow of common stock, class B.—The certificates representing all of the common stock, class B, to which creditors are entitled under the plan shall be deposited with an escrow agent under an escrow agreement which shall continue for a period of ten (10) years after consummation of the plan or until all warrants herein provided for shall have been exercised. The escrow agent shall issue to creditors entitled to receive common stock, class B, under the plan certificates of beneficial interest representing all of the common stock, class B, held in escrow. If at the termination of the voting trust there shall be any common stock, class B, held in escrow, holders of certificates of beneficial interest representing such common stock, class B, shall thereafter be entitled to have registered in their respective names, if they shall so request, a number of shares of common stock, class B, equal to the number of shares represented by such certificates of beneficial interest.

Whenever warrants shall be exercised in respect of common stock, class B, held in escrow, the purchase price of such common stock, class B, shall be paid to the escrow agent and held by the escrow agent until disposed of as hereinafter provided. Moneys so paid to the escrow agent shall be applied from time to time to the redemption of outstanding certificates of beneficial interest representing common stock, class B, at $100 for each share of common stock, class B, represented by such certificates; provided, however, that except upon the termination of the escrow agreement the escrow agent shall not apply to such redemption any amount less than $1,000,000 in the aggregate unless the new company shall in writing so request. The certificates of beneficial interest to be redeemed shall be determined by lot on the basis of units of one share of common stock, class B. During the continuance of the escrow agreement any dividends paid on common stock, class B, held by the escrow agent shall be distributed pro rata among the holders of certificates of beneficial interest. Upon the termination of the escrow agreement any common stock, class B, held by the escrow agent shall be distributed pro rata among holders of certificates of beneficial interest, after applying to redemption of such certificates, as aforesaid, any cash then held by the escrow agent representing proceeds of the exercise of warrants.

Whenever in the provisions of this section relating to warrants and to the escrow agreement, the term "common stock, class B," is used, it shall, unless the context otherwise requires, be deemed to mean voting-trust certificates issued therefor during the continuance of the voting trust provided for in this section.

Provision shall be made for adjustment of the price per share of common stock, class B, at which warrants may be exercised in the event of the issuance of additional common stock, class B, at a price less than the warrant price and also for the adjustment of the number of shares that may be purchased by exercise of the warrants in the event of the subdivision or combination of outstanding shares of common stock, class B, or the distribution of dividends payable in common stock, class B; also provision shall be made for protection of the holders of the warrants in the event of a consolidation or merger of the new company with any other corporation, or the sale or conveyance of its property as an entirety or substantially as an entirety to any other corporation.

R. Securities retirement fund.—The new first mortgage, the new general mortgage and the certificate of incorporation of the new company shall contain provisions to the effect that whenever a dividend or distribution (other than a dividend payable in stock of the new company) is declared on the new common stock of either class, additional funds in a sum equal to one-third of the aggregate of such dividend or distribution shall be set aside as a sinking fund and used for the purchase or redemption for retirement of general-mortgage bonds, series A or series B, issued pursuant to the plan.

The retirement fund shall continue to operate until all of said general-mortgage bonds issued pursuant to the allotments of new securities as hereinafter in the plan provided for, have been retired.

S. Issue of New Securities—Scrip.—The new securities may be issued in temporary form in the first

instance or interim certificates may be issued therefor. Scrip may be issued and distributed in lieu of fractions of a warrant, share of stock, bond or note. Such scrip shall be non-dividend bearing or non-interest bearing and non-voting, but shall be exchangeable for new securities (or interim certificates therefor) when presented in proper multiples upon terms and conditions approved by the reorganization managers. Accrued interest upon outstanding claims has been calculated as of December 31, 1942, and in most cases results in odd amounts which would involve the delivery of scrip representing small fractions. Such adjustments of these interest amounts as may be necessary to avoid the issuance of scrip in too small fractions may be made by the reorganization managers in their discretion.

T. Allocation of New Securities and Treatment of Claims.—The computation of outstanding claims upon which the plan is based gives effect to the payment prior to January 1, 1944 of:

(1) Principal and interest on all outstanding Pacific Railroad Company of Missouri first-mortgage 4-percent bonds;

(2) Principal and interest on all outstanding Pacific Railroad Company of Missouri, Carondelet Branch, first-mortgage 4½-percent bonds;

(3) Principal and interest on all outstanding Pacific Railroad Company of Missouri second-mortgage 5-percent bonds;

(4) Principal and interest on all outstanding Missouri Pacific Railway Company third-mortgage 4-percent bonds;

(5) Principal and interest on all outstanding Pacific Railroad Company of Missouri, St. Louis City Real Estate, first-mortgage 5-percent bonds;

(6) 30-percent of the principal amount of all outstanding St. Louis, Iron Mountain and Southern Railway Company, River and Gulf Divisions, 4-percent first-mortgage bonds, together with interest on said 30 percent of principal.

The computations do not give effect to any payments, other than those specified above, which may be authorized or may have been authorized after December 31, 1942. All payments of interest authorized prior to January 1, 1943, are to be credited and have been credited in the computations herein against the respective claims.

The equipment obligations of the debtors and of the trustee of the estates of the debtors outstanding upon consummation of the plan shall remain undisturbed and shall be assumed by the new company.

The holders of Missouri Pacific first and refunding mortgage 5-percent gold bonds of the respective series shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943 approximately the following:

	First-mortgage bonds series C	General-mortgage bonds Series A	General-mortgage bonds Series B	Preferred stock	Common stock class A (No. of shares)
Series A	$400	$330	$150	$222	2.74
Series F	398	378	149	221	2.76
Series G	402	383	151	224	2.78
Series H	404	384	152	224	2.79
Series I	400	380	150	221	2.74

The holders of the said bonds of the respective series shall be entitled at their election to receive, in lieu of the common stock, class A, allocated to them as above set forth, cash per $1,000 bond as follows:

Series A	$71.10
Series F	71.63
Series G	72.12
Series H	72.46
Series I	71.10

The holders of Missouri Pacific general mortgage 4-percent bonds shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately 13.93 shares of new common stock, class A.

The holders of Missouri Pacific secured serial 5¼-percent bonds shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately 7.5 shares of new common stock, class A, 5 shares of new common stock, class B, and a warrant to subscribe for 4.19 shares of new common stock class B, at $100 per share.

The holders of Missouri Pacific 20-year convertible 5½-percent bonds shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately 10 shares of new common-stock, class B, and a warrant to subscribe for 8.39 shares of new common-stock, class B at $100 per share.

The plan contemplates, as hereinbefore stated, that the holders of St. Louis, Iron Mountain & Southern Railway Company River and Gulf Divisions 4-percent first-mortgage bonds will have received prior to January 1, 1944, $300 in cash in settlement of 30 percent of the principal amount of each $1,000 bond plus

interest on said 30 percent; they shall receive for the remaining $700 claim for principal, plus unpaid interest thereon to January 1, 1942, approximately the following cash and new securities: The amount of such interest in cash, $300 principal amount of new collateral-trust notes and, at the election of the holder, either $400 principal amount of new first-mortgage bonds, series C, or $400 principal amount of new first-mortgage bonds, series A; *provided*, however, that, if the Reconstruction Finance Corporation shall elect to receive new first-mortgage bonds, series A, the alternative to said series C bonds shall be $400 principal amount of new first-mortgage bonds, series B.

The cancellation of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions 4-percent first-mortgage bonds owned by Western Coal & Mining Company, as provided in sections E and F hereof, shall be effective only after the receipt by said company of its share of the foregoing allocations to the holders of the bonds of said issue.

The holders of Plaza-Olive Building first-mortgage 6-percent bonds shall receive for each $1,000 bond and unpaid interest thereon (determined in accordance with the provisions of section K hereof) to the date of consummation of the plan a sum in cash equal to the amount of such interest and $1,000 principal amount of new Plaza-Olive Building first-mortgage bonds.

The holders of Cairo & Thebes Railway Company first-mortgage 4-percent bonds shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately $100 in cash, $750 principal amount of new first-mortgage bonds, series C, and $283 principal amount of new general-mortgage bonds, series A.

The trustee of the mortgage securing Little Rock & Hot Springs Western Railway Company first-mortgage 4-percent bonds shall receive approximately $684,000 principal amount of new general-mortgage bonds, series A, and $820,800 par value of new preferred stock, series A, in consideration for the release by said mortgage trustee of that part of the line of railroad of the Little Rock & Hot Springs Western Railway Company extending from Benton to Hot Springs, Arkansas, and for the release of the new company from any obligations in connection with said mortgage.

The holders of Boonville, St. Louis & Southern Railway Company first-mortgage 5-percent bonds shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately $50 in cash, $274 principal amount of new first-mortgage bonds, series C, and $274 par value of new preferred-stock, series A.

The holders of Boonville, St. Louis & Southern Railway Company first-mortgage 5-percent bonds shall also receive distribution by the mortgage trustee of the net cash proceeds from the abandoned line of that railroad and the cancellation of any bonds of said issue owned by Western Coal & Mining Company, Missouri Pacific or the trustee as provided in sections E and F hereof shall be effective only after the receipt by said companies of their pro-rata share of the net cash proceeds of such salvage. As of December 31, 1942, the amount available for bonds in the hands of the public was $254.32 per $1,000 bond.

The holders of Central Branch Union Pacific Railway Company first-mortgage 4-percent bonds shall re-

ceive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately $60 in cash, $370 principal amount of new first-mortgage bonds, series C, $230 principal amount of new general-mortgage bonds, series A, $400 principal amount of new general-mortgage bonds, series B, and $253 par value of new preferred-stock, series A.

The holders of New Orleans first-mortgage bonds of the respective series and income bonds shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately the following:

	First-mortgage bonds, series C	General-mortgage bonds, series A	General-mortgage bonds, series B
Series A	$640	$445	$128
Series B	639	447	127
Series C	631	441	124
Series D	611	424	121
Income 5s	581	333	120

The holders of the said bonds shall be entitled at their election to receive in lieu of general-mortgage bonds, series B, allocated to them as above set forth cash per $1,000 bond as follows: Series A $86.14, series B $84.75, series C $83.09, series D $81.49, and income 5s $74.19.

The holders of International first-mortgage bonds of the respective series shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately the following:

	First-mortgage bonds Series C	General-mortgage bonds Series A	General-mortgage bonds Series B	Preferred stock	Common-stock class A (No. of shares)
Series A	$123	$543	$153	$344	5.63
Series B	116	513	145	331	4.73
Series C	116	513	145	331	4.73

The holders of the said bonds of the respective series shall be entitled at their election to receive, in lieu of the common stock, class A, allocated to them as above set forth, cash per $1,000 bonds as follows: Series A $130.49, series B $122.63, and series C $122.63.

The holders of International adjustment-mortgage 6-percent bonds shall receive for each $1,000 bond and unpaid interest thereon to January 1, 1943, approximately 9.50 shares of new common stock, class A, 5 shares of new common-stock, class B, and a warrant to subscribe for 4.28 shares of new common-stock, class B, at $100 per share.

Reconstruction Finance Corporation shall receive in respect of the principal sum of the notes of Missouri Pacific held by it and accrued interest thereon to January 1, 1943, approximately $5,329,242 in cash and, at the election of Reconstruction Finance Corporation, either $23,134,800 principal amount of new first-mortgage bonds, series A, or $23,134,800 principal amount of new first-mortgage bonds, series B.

J. P. Morgan & Company, Incorporated and participating banks shall receive for the principal sum of the notes of Missouri Pacific held by them and accrued interest thereon to January 1, 1943, approximately $1,480,382 in cash and, at their election, either $5,850,000 principal amount of new first-mortgage bonds, series A, or $5,850,000 principal amount of new first-mortgage bonds, series B.

Railroad Credit Corporation shall receive for the principal sum of the notes of Missouri Pacific and International held by it and accrued interest thereon to January 1, 1943, approximately $3,806 in cash and,

at its election, either $2,487,000 principal amount of new first-mortgage bonds, series A, or $2,487,000 principal amount of new first-mortgage bonds, series B.

Any income or other funds received by J. P. Morgan & Company, Incorporated and participating banks, Reconstruction Finance Corporation or Railroad Credit Corporation after December 31, 1942 and up to the date of consummation of the plan upon any collateral held by them, may be retained by them and shall be applied as provided in section A hereof.

The holders of the New Orleans capital-stock shall receive for each $100 par value of said stock, approximately 0.25 share of new common-stock, class A, 0.50 share of new common-stock, class B, and a warrant to subscribe for 0.37 share of new common-stock, class B, at $100 per share.

Claims against the debtors entitled to priority over their respective mortgages, current liabilities and obligations incurred by the bankruptcy trustees during the reorganisation proceedings, to the extent unpaid at the date of consummation of the plan, shall be paid in cash or assumed by the new company with the same relative priority as they now have with respect to other obligations of such debtors. All such claims, liabilities and obligations may be adjusted or compromised and dealt with or paid and discharged by the new company in such manner as may be determined by the board of directors of the new company subject to the approval of the court. When so treated as in this paragraph provided, the interests of such class of creditors will not be adversely and materially affected by the plan.

Holders of general unsecured claims against any of the debtors (other than the New Orleans and its subsidiaries and the International), which are not entitled to preference, shall receive for each $1,000 of principal, 10 shares of common stock, class B, and for each $1,000 of unpaid interest to January 1, 1943, a warrant to subscribe to 15 shares of new common stock, Class B, at the price of $100 per share.

Holders of general unsecured claims against the New Orleans and its subsidiaries other than the International, which are not entitled to preference, shall receive for each $1,000 of claim, including principal and unpaid interest to January 1, 1943, 10 shares of common stock, class A.

Holders of general unsecured claims against the International, which are not entitled to preference, shall receive for each $1,000 of claim, including principal and unpaid interest to the effective date of the plan, a warrant to subscribe to 10 shares of new common stock, class B, at the price of $100 per share.

The court in its discretion may authorize cash compromise settlements of any general unsecured claims for amounts approximating the estimated expense to the trust estates of contesting such claims.

Creditors who are entitled to an election to receive securities of one class in lieu of securities of another class or cash in lieu of securities, shall make such election within such time (not earlier than the date upon which the plan is confirmed), and in such manner as the reorganization managers, subject to the approval of the court, shall determine.

After confirmation of the plan, the trustee of the estates of the debtors shall upon request of the

reorganization managers pay to them a sum in cash equal to the difference between (a) the maximum amount which would be payable to creditors under the alternative offers of cash or securities herein provided for and (b) the amount of cash theretofore distributed to such creditors which is to be credited against cash payable under the plan pursuant to section A hereof. Said funds, together with any cash refunded to the reorganization managers by creditors who shall elect to take the alternative offer of securities, shall be deposited in a separate account to the credit of the reorganization managers and shall be used by them solely for the following purposes:

(1) On consummation of the plan to pay to creditors who, under the alternative offer of cash or securities, shall have elected to receive cash, the amounts to which such creditors, respectively, are entitled, as set forth in this section T, and

(2) To acquire in the open market or at private sale, including purchases on a "when issued" basis, a principal amount of general-mortgage bonds, series B, and a number of shares of common stock which shall not exceed the principal amount of general-mortgage bonds, series B, and the number of shares of common stock which are to be issued to creditors pursuant to their election to take such bonds and stock in lieu of cash.

The reorganization managers shall make such disposition of the securities so acquired as the court may direct. Any unexpended balance of said funds shall be paid into the sinking fund for first-mortgage bonds, series A, B and C and/or the sinking fund for general mortgage bonds, series A or B, as the board of directors of the new company shall determine. The trustee of the estates of the debtors shall

allocate the charge for the above mentioned payment to the reorganization managers among the estates of the Missouri Pacific, the New Orleans and the International in proportion to the amounts of cash (after deducting prior distributions) offered to the creditors of the respective estates under the alternative offers of cash or securities.

There shall be set aside for securities issued in the reorganization of 1917 which have not been claimed, new securities under the plan to the same extent as for outstanding securities of the debtors. The new securities so set aside shall be exchanged for the old securities outstanding prior to said reorganization upon presentation. After the expiration of 6 months from the date of consummation of the plan, all the new securities so set aside which shall not have been exchanged, shall be canceled, and the securities issued in the reorganization of 1917 which shall not have been claimed and exchanged for new securities prior to the expiration of such period (except so far as canceled pursuant to section F hereof), shall become null and void. An appropriate notice, advising the persons entitled to securities issued in the 1917 reorganization which have not been claimed of their rights, shall be published. Said notice shall contain such provisions, be in such form and be published in such manner, as the reorganization managers shall, with the approval of the court, determine.

The new company shall, with respect to certain guaranties and agreements executed in connection with contracts as described in proofs of claims filed with the court as hereinbelow listed, whereby the debtors of the companies in question, or their predecessors or the trustee of the estates of the debtors

acquired certain rights with respect to terminal operations, to the extent that such guaranties and agreements are binding upon any of the debtors, assume such guaranties and agreements and comply with the provisions and conditions of the indentures, contracts or leases relating to the bond or trust certificates issued, referred to in such proofs of claims, and shall assume and adopt the contracts relating to such terminal operations. When so treated the interests of the claimants under any of such guaranties, executory contracts or agreements will not be adversely and materially affected by the plan. The guaranties and agreements with respect to such contracts are described in the following proofs of claims: Proof of claim No. 912 (court record p. 7121), filed by Continental Illinois National Bank and Trust Company of Chicago, successor trustee under Kansas City Terminal Railway first-mortgage; proof of claim No. 913 (court record p. 7127), filed by Bankers Trust Company, trustee under Memphis Union Station Company first-mortgage; proof of claim No. 928 (court record p. 7027), filed by Central Hanover Bank and Trust Company, trustee under Galveston, Houston and Henderson Railway Company mortgage; proof of claim No. 929 (court record p. 7217), filed by Central Hanover Bank and Trust Company, trustee under Houston Belt and Terminal Railway Company first-mortgage; proof of claim No. 930 (court record p. 7229), filed by Central Hanover Bank and Trust Company, trustee under Terminal Railroad Association of St. Louis general mortgage; proof of claim No. 933 (court record p. 7271), filed by Guaranty Trust Company, trustee under Terminal Railroad Association of St. Louis first mortgage; proof of claim No. 933 (court record p. 7271), filed by Guaranty Trust Company,

trustee under Terminal Railroad Association of St. Louis first-consolidated mortgage; proof of claim No. 934 (court record p. 7285), filed by Guaranty Trust Company, trustee under Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans first mortgage; proof of claim No. 935 (court record p. 7295), filed by Guaranty Trust Company, trustee under Texarkana Union Station trust; proof of claim No. 936 (court record p. 7301), filed by Guaranty Trust Company, trustee under Arkansas & Memphis Railway Bridge and Terminal Company first mortgage.

The new company shall assume the liability for and shall pay in full in due course any and all taxes due to the United States from the reorganization trustee for any taxable period subsequent to March 31, 1933, and prior to the date of confirmation of the plan, subject to the statutes of limitations normally applicable to the assessment and collection of such taxes, without requiring proof in this proceeding of any such taxes for the year 1937 or any subsequent year: *provided, however,* that the liability of the new company for any taxes which are the subject of litigation on the date of confirmation of the plan, or which may become the subject of litigation on any date thereafter and prior to the expiration of the applicable statutes of limitations, shall be determined pursuant to law, and *provided further,* that this provision shall not be deemed to preclude any of the debtors, their trustees or the new company from contesting the merits of any such tax claim in the manner provided by law.

The debtors as reorganized, or the transferee of the property of the debtors, in connection with any settlements of transportation accounts between the United

States and the debtors or the reorganized company, shall be required to recognize and pay or allow for any and all sums, determined through audit, adjustment, compromise, or litigation, as due the United States by virtue of the provisions of section 322 of the Transportation Act of 1940, 54 Stat. 955, for overpayments made prior to the date of confirmation of a plan of reorganization, without requiring proof thereof in this reorganization proceeding and without prejudice by reason of such sums not having been proved herein, with the same relative priority as they now have with respect to other obligations of the debtors.

As a condition of its approval of the conveyance of the properties of the debtors to the new company, this Commission shall require a fair and equitable arrangement to protect the interest of the railroad employees affected, as required by law.

The expenses of reorganization, as allowed by the court, subject to the provisions of section 77, shall be paid in cash as a cost of administration prior in lien to the new securities issued under the plan.

Preferred claims not entitled to priority over the mortgages shall be paid in cash as the court may order or assumed by the new company with the same relative priority to which they are now entitled. When so treated, such preferred claims will not be materially and adversely affected by the plan.

All contracts made by the trustee pursuant to his duties as such trustee, or made by the debtors subsequent to March 31, 1933, and prior to the appointment of the trustee, and executory contracts made by the debtors prior to March 31, 1933, not disaffirmed by the trustee prior to the time set by order of the court for

disaffirmance, shall be assumed by the new company. When such contracts are assumed by the new company, the interests of the other parties to such contracts so assumed will not be adversely and materially affected by the plan.

The Railroad Credit Corporation shall release and surrender to the new company its rights and interests in the debtors' distributive shares under the marshaling and distributing plan, 1931, when, and only when, any proceeds from such shares applied by the Railroad Credit Corporation to the payment of principal or interest of and upon the obligations of the debtors, together with the cash and proceeds from the sale of the new bonds which it shall receive in the reorganization shall equal the principal of and accrued unpaid interest on its loans to the debtors. Thereafter such rights and interests of the Railroad Credit Corporation in the debtors' distributive shares under the marshaling and distributing plan, 1931, and any proceeds therefrom shall be turned over to the new company.

If the properties of the International and of the Austin Dam & Suburban Railway Company shall be transferred to the reorganized International, then notwithstanding the foregoing provisions, the reorganization managers may, with the approval of the court, require the reorganized International to assume equipment obligations, taxes, preferred claims, obligations upon contracts, and other obligations of said debtors of the kind hereinbefore mentioned. Similarly the reorganized Natchez, if any, may be required to assume obligations of the kind mentioned in the foregoing sentence.

U. Board of Directors.—The board of directors of the new company shall consist of fifteen (15) members who shall be elected by the voting trustees so long as the voting trust shall continue in effect and thereafter by the stockholders. The members of the first board of directors shall be elected by the voting trustees from a panel of nominees designated as follows: Five (5) by the group of institutional holders of Missouri Pacific first and refunding-mortgage bonds, of whom three (3) shall be residents of the territory served by the Missouri Pacific; one (1) by Reconstruction Finance Corporation; two (2) by the committee for New Orleans first-mortgage and income bonds, one (1) of whom shall be a resident of the territory served by the New Orleans; two (2) by the trustee of the International first-mortgage bonds of whom one (1) shall be a resident of the territory served by the International; two (2) by the protective committee for Missouri Pacific general-mortgage bonds of whom one (1) shall be a resident of the territory served by the Missouri Pacific; and two (2) by the trustee under the indenture securing the Missouri Pacific convertible 5½-percent bonds, of whom one (1) shall be a resident of the territory served by Missouri Pacific system (including the New Orleans and International). If any such nominee shall not be acceptable to the voting trustees, they shall promptly so notify the party who nominated him, and thereupon such party may designate another nominee who shall be acceptable to the voting trustees. The voting trustees shall give to the above-named parties at least 30 days' notice of the date fixed for the election of the first board of directors. If, on the fifth day prior to the date fixed for the election of the first

board of directors, any of the above-named parties shall have failed to designate his nominee or nominees, the voting trustees may fill the vacancy or vacancies in the panel occasioned by such failure. The president of the new company shall be the fifteenth director.

V. **Reorganization managers.**—There shall be five (5) reorganization managers, all to be approved by the court, of whom two (2) shall be designated by the group of institutional holders of Missouri Pacific first and refunding-mortgage bonds, one (1) jointly by the committee representing the New Orleans first-mortgage and income bonds and the trustee of the International first mortgage, one (1) by Reconstruction Finance Corporation, and one (1) jointly by the protective committee for Missouri Pacific general-mortgage bonds and by the trustee under the indenture securing the Missouri Pacific convertible 5½-percent bonds. Should any of the parties named fail to designate its representative or representatives within such time as the court shall consider reasonable, the court shall appoint such representative or representatives. If there be any vacancy, however created, after the appointments are made, the successor member shall be appointed by the party or parties who designated the member whose position has become vacant, and if any committee initially appointing such member shall not be in existence, the appointment shall be made by the individual who was formerly the last chairman of that committee.

Subject to any limitations of law, the reorganization managers shall have full and plenary discretionary power (a) to take all such action and to enter into

such arrangements, financial and otherwise, as they may deem necessary or advisable in order to consummate and carry into execution the plan; (b) to fix the compensation of trustees, depositaries, counsel and others whose services they may employ in the execution of their powers and of the voting trustees; (c) to incorporate the new company, the reorganized International and the reorganized Natchez, to supervise the transfer of the various properties to the new company, the reorganized International and the reorganized Natchez and to make agreements and commitments for its or their account subject to confirmation by the new company or the reorganized International or the reorganized Natchez; (d) to provide the method by which creditors and other interested parties may participate in the plan; and (e) to determine the form and provisions (so far as not otherwise specifically provided in the plan) of the certificates of incorporation of the new company, the reorganized International and the reorganized Natchez or their articles of association or consolidation and their bylaws, the new bonds, notes and coupons, and the mortgages and trust agreements under which the same shall be issued, the voting trust agreement and certificates, the stock certificates, the escrow agreement and certificates of beneficial interest, the warrants, scrip, interim certificates and any other instruments deemed by the reorganization managers to be necessary or proper in connection with the plan; and (f) to construe the plan, and any construction approved by them on advice of counsel shall, subject to approval by the court, be conclusive. The reorganization managers, however, shall exercise only such power as shall be necessary to carry out the plan in

accordance with its provisions, subject to the direction of the court. The reorganization managers may act, by a majority of the reorganization managers, as from time to time constituted, at a meeting or in writing without a meeting, and may delegate to others any power or discretion conferred upon them, and no reorganization manager shall be liable for any action taken by him in good faith or by any person employed by the managers except for his individual malfeasance or willful neglect. The indenture trustees, escrow agent, transfer agents and registrars of the new securities, and such depositaries as may be necessary in connection with the distribution thereof, shall be appointed by the reorganization managers.

Nothing herein contained shall be construed as authorizing the reorganization managers to solicit deposits of securities or authorization to represent security holders, except upon approval by this Commission of the terms of such solicitation by further action pursuant to section 77 (p) of the Bankruptcy Act, as amended.

W. **Execution of the plan by sales.**—If so ordered by the court, the plan, after it shall have been found fair and equitable and shall have been confirmed by the court, may be executed by the sale or sales at not less than fair upset prices to be fixed by the court of all or any part of the property of any of the debtors, all on such conditions, including the extent to which the sale may be free of liens or subject to prior liens or interests, and in such manner as the court may direct. Upon any such sale or sales, the property and assets offered for sale may be purchased for the benefit of the new company by the reorganization man-

agers, and in that event there shall be applied on account of the purchase price the distributive share of the proceeds of such sale of all securities the holders of which shall have assented to the plan, and of the securities, though not assenting to the plan, of all classes which shall have accepted the plan. If the property of the debtors so offered for sale should be sold to others than the reorganization managers, the plan herein approved shall be deemed inoperative except insofar as provision is made therein for the sale of the properties at such sales as may be ordered by the court, provided that, if any or all of the property subject to the following mortgages, to-wit, The Central Branch Union Pacific Railway Company first mortgage, Little Rock & Hot Springs Western Railroad Company first mortgage, Cairo & Thebes Railroad Company first mortgage and the Boonville, St. Louis & Southern Railway Company first mortgage, should be sold to others than the reorganization managers, the plan shall not be deemed inoperative but shall be executed without the inclusion of such property or properties in the reorganization, and the coverage of the mortgages and the issue of securities shall be adjusted accordingly and the proceeds of the sale shall be applied, all as directed by the court.

In the event of any such sale to the reorganization managers, the managers may in their discretion sell all or any portion of the new securities distributable under the plan in respect of securities of any bondholder, if neither such bondholder nor the class to which such bondholder belongs shall have accepted the plan, provided that bondholders in a class which shall not have accepted the plan, and who themselves shall not have accepted the plan shall have the right,

if they shall so notify the managers within a period of 30 days after the confirmation of such sale, to assent to the plan and receive the securities allocated to them under the plan in lieu of their aliquot share of the proceeds of such sale. The proceeds of any such sale of securities may be used to pay the portion of the purchase price payable in cash on any such sale of the properties.

X. **Court may construe plan.**—The construction of the plan by the court shall be final and conclusive. The court may cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient to carry out the plan effectively.

Y. **Effect of acceptance of plan.**—Acceptance of the plan shall include acceptance of the provisions of the new bonds, mortgages, notes, indentures, stock certificates, warrants, certificates of beneficial interest, voting trust certificates and all instruments necessary and appropriate to the carrying out of the plan, other than the orders of the court and this Commission, to the same effect as though the terms of such instruments were set forth in full herein.

Z. The carrying out of the plan shall be as provided in the Bankruptcy Act.

It is further ordered, That the journal entries covering the necessary accounting adjustments under the plan herein approved shall be submitted to the Bureau of Accounts of this Commission for approval before the permanent accounting records are made.

It is further ordered, That nothing herein contained shall be, or be construed as, a grant of authority for

the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's property, or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, except as provided herein, or until further action by this Commission upon confirmation of the plan by the court.

It is further ordered, That, except as otherwise decided in the aforesaid reports, all petitions heretofore made or filed in this proceeding for oral argument, filing of further briefs, rehearing, reopening of the proceeding or for other relief, be and they are hereby, denied.

It is further ordered, That approval at this time of any plan of reorganization of the Missouri-Illinois Railroad Company, debtor, be, and it is hereby, refused without prejudice to a continuation of the proceedings for the reorganization of the Missouri-Illinois Railroad Company, or dismissal of such proceedings as the court may direct.

It is further ordered, That the orders entered herein on January 10, 1940, April 9, 1940, and July 4, 1944, be, and they are hereby, revoked and superseded.

By the Commission.

W. P. BARTEL,
Secretary.

(Seal)

A true copy:

W. P. BARTEL,
Secretary of the Interstate
Commerce Commission.

Filed October 13, 1944. Jas. J. Oconnor, Clerk.

Vol. IV

TRANSCRIPT OF RECORD

(Pages 1 to 40)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, A HOLDER OF MISSOURI PACIFIC RAILROAD COMPANY 5¼% SECURED SERIAL GOLD BONDS, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 452

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 453

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 454

ANDREW W. COMSTOCK, PETITIONER,

vs.

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED NOVEMBER 24, 1947.

United States Circuit Court of Appeals
EIGHTH CIRCUIT

No. 13,376. In Bankruptcy

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,377. In Bankruptcy.

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico, Railway Company,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.
Appellees.

No. 13,378. In Bankruptcy.

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,379. In Bankruptcy.

ANDREW W. COMSTOCK,
Appellant,

vs.

GUY A. THOMPSON, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor, et al.,
Appellees.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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United States Circuit Court of Appeals
Eighth Circuit.

Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount of said bonds, Appellant,

No. 13376 vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., Appellees.

New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company, Appellant,

No. 13377. vs.

Group of Institutional Investors holding Frst and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., Appellees.

Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company, Appellant,

No. 13378. vs.

[fol. 2] Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., Appellees.

Andrew W. Comstock, Appellant,
No. 13379. vs.
Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, et al., Appellees.

Appeals from the District Court of the United States for the Eastern District of Missouri.

Mr. William H. Biggs, Mr. Maxwell Brandwen, and Mr. Phillip I. Blumberg, for Appellants.

Mr. Marion B. Pierce for Appellee, Debtor.

Mr. Harry Kirshbaum for Appellee Convertible Bondholders Group.

Mr. Leonard P. Moore and Mr. Clair B. Hughes for Appellee Manufacturers Trust Company, Corporate Trustee under First and Refunding Mortgage of Missouri Pacific.

Mr. Sanford H. E. Freund for Appellee General Mortgage Bondholders Protective Committee.

Mr. W. Lyold Kitchel, Mr. Charles W. McConaughy and Mr. Jacob Chasnoff for Appellee Group of Institutional Investors.

[fol. 3] Mr. Leonard D. Adkins and Mr. S. Mayner Wallace for Appellee Committee for N. O. T. & M. Bonds.

Mr. Emmet McCaffery and Mr. Emmet Carter for Appellee Chemical Bank & Trust Company, as Trustee under the Indenture dated December 1, 1926, securing the Missouri Pacific Secured Serial Gold Bonds.

Mr. William P. Palmer, Mr. Owen D. Nee, and Messrs. Root, Ballantine, Harlan, Bushby & Palmer for Appellee The Commercial National Bank and Trust Company of New York, Trustee for the Debtors 5% Convertible Gold Bonds.

Mr. Adrian L. Foley and Mr. Glover Johnson for Appellee Alleghany Corporation.

Mr. Luther M. Walter for Appellees.

Mr. David Teitelbaum and Messrs. Donovan, Leisure, Newton, Lumbard & Irvine for Appellees.

[fol. 4] **(Motion of Appellees Group of Institutional Investors holding First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company and Protective Committee for holders of General Mortgage Bonds of Missouri Pacific Railroad Company to dismiss appeals in Causes Nos. 13377, 13378, 13379.)**

The Group of Institutional Investors holding First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company and the Protective Committee for holders of General Mortgage Bonds of Missouri Pacific Railroad Company, appellees, move the Court to dismiss the above entitled appeals upon the following grounds:

1. Cause No. 13377. This is an appeal from Order No. 2604-A overruling Comstock's Objection 19. (R.7). The grounds for dismissal of this appeal are:

(a) No objections to the Plan* and no claims for equitable treatment were filed in the court below by or on behalf of the New Orleans**. The appellant, Andred W. Comstock, did not appear on behalf of the New Orleans in the proceedings below which resulted in the entry of Order No. 2604-A. Accordingly, he is not entitled to appeal from said order in the name of the New Orleans.

(b) Upon information and belief, said Andrew W. Comstock has not been authorized to appeal from Order No. 2604-A in the name of the New Orleans by the New Orleans, by the Court below, or by Guy A. Thompson, Trustee of the New Orleans.

[fol. 5] (c) The brief filed on behalf of said Andrew W. Comstock in support of the above entitled appeals fails to comply with Rule 11(b) of the Rules of this Court in that said brief contains no separate and particular statement of a point pertaining to his right to appeal in the name of the New Orleans, and no such point is urged in said brief.

2. Cause No. 13378. This is an appeal from Order No. 2604-A. (R.7) The grounds for dismissal of this appeal are:

---

*The plan of reorganization approved by order of the court below, No. 2604-B (R. 1124-1128), is referred to herein as the "Plan".

**The New Orleans, Texas & Mexico Railway Company, one of the subsidiary debtors in the reorganization proceedings below is herein referred to as the "New Orleans".

(a) No objections to the Plan and no claims for equitable treatment were filed in the court below by or on behalf of Guy A. Thompson, as Trustee of the New Orleans. Said Andrew W. Comstock did not appear on behalf of Guy A. Thompson as Trustee of the New Orleans in the proceedings below which resulted in the entry of Order No. 2604-A. Accordingly, he is not entitled to appeal from said order in the name of Guy A. Thompson, as Trustee of the New Orleans.

(b) Upon information and belief, neither the court below nor Guy A. Thompson has authorized said Andrew W. Comstock to appeal from Order No. 2604-A in the name of Guy A. Thompson, as Trustee of the New Orleans. (See R. 39).

(c) The brief filed on behalf of said Andrew W. Comstock in support of the above entitled appeals fails to comply with Rule 11(b) of the Rules of this Court in that said brief contains no separate and particular statement of a point pertaining to his right to appeal in the name of Guy A. Thompson, as Trustee of the New Orleans and no such point is urged in said brief.

[fol. 6] 3. Cause No. 13379. This is an appeal from Order No. 2888 of the court below (R. 39) denying an application of said Andrew W. Comstock (R. 35) for leave to appeal from Order No. 2604-A in the name of Guy A. Thompson, as Trustee of the New Orleans. The grounds for dismissal of this appeal are:

(a) If and to the extent that said Andrew W. Comstock is entitled to appeal from Order No. 2604-A, his right is to appeal in his own name in respect of issues which were properly raised and presented by him in the court below.

(b) The brief filed on behalf of said Andrew W. Comstock in support of the above entitled appeals fails to comply with Rule 11(b) of the Rules of this Court in that said brief contains no separate and particular statement of a point pertaining to his appeal from Order No. 2888 and no such point is urged in said brief. (See R. 56-57).

The foregoing motion is made upon the record on appeal herein and the brief filed in December 1946 on behalf of the appellants in the above entitled cause.

Wherefore the above named appellees pray that the foregoing motion be granted.

GROUP OF INSTITUTIONAL INVESTORS HOLDING FIRST AND REFUNDING MORTGAGE BONDS OF MISSOURI PACIFIC RAILROAD COMPANY,

By Charles W. McConaughy,
One of its Attorneys.

PROTECTIVE COMMITTEE FOR THE HOLDERS OF GENERAL MORTGAGE BONDS OF MISSOURI PACIFIC RAILROAD COMPANY,

By Sanford H. E. Freund,
Its Attorney.

[fol. 7] State of New York,
County of New York.—ss.:

Charles W. McConaughy, being duly sworn, deposes and says: That he is one of the attorneys for the Group of Institutional Investors holding First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company, one of the appellees in the above entitled appeals; that he has read the foregoing motion and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

CHARLES W. McCONAUGHY.

Sworn to before me this 14th day of April, 1947.

ALLEN SOCOLOW,
Notary Public in the State of New York,
Residing in Bronx County,
(Seal) Bronx County No. 114, Reg. No. 9159.

Cert. filed in N. Y. Co. No. 225, Reg. No. 36859.

Commission Expires March 30, 1949.

Notice of Motion.

Please take notice that the undersigned will bring the foregoing motion on for hearing before this Court, (Division No. 1), at the Uptown Post Office Building, Fifth and Market Streets, St. Paul, Minnesota, on the 8th day of May, 1947, at the hearing of the argument of the above entitled appeals and Cause No. 13376, or as soon thereafter as counsel can be heard.

[fol. 8]

W. LLOYD KITCHEL,

CHARLES W. McCONAUGHY,
14 Wall Street,
New York 5, N. Y.,

JACOB CHASNOFF,
408 Pine Street,
St. Louis 2, Mo.,
Attorneys for the Group of Institutional Investors holding First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company.

SANFORD H. E. FREUND,
20 Exchange Place,
New York 5, N. Y.,
Attorney for the Protective Commitee for holders of General Mortgage Bonds of Missouri Pacific Railroad Company.

To:

Wm. H. Biggs,
319 N. Fourth Street,
St. Louis, Missouri.

Maxwell Brandwen,
30 Broad Street,
New York 4, N. Y.,
Counsel for Andrew W. Comstock, et al., Appellants.

James J. O'Brien and Daniel Lowenthal,
1732 Bankers Securities Bldg.,
Philadelphia, Pennsylvania,
Counsel for Harry W. Harrison, et al.,
Holders of Preferred Stock, Appellees.

[fol. 9] Luther M. Walter,
2106 Field Bldg.,
Chicago, Illinois,
Counsel for Protective Committee for Holders of Missouri Pacific Common Stock, Appellees.

White & Case,
14 Wall Street,
New York 5, N. Y.,
Counsel for Alleghany Corporation, Appellee.

Harry Kirshbaum,
67 West 44th Street,
New York 18, N. Y.,
Edward J. Bean,
Paul Brown Building,
St. Louis, Missouri,
Counsel for Gerald Axelrod, et al., Appellees.

Carl O. Hoffman,
30 Broad Street,
New York 4, N. Y.,
Counsel for The Continental Bank & Trust Company of New York, Successor Corporate Trustee, Missouri Pacific Railroad Co. General Mortgage, Appellee.

Chadbourne, Wallace, Parke & Whiteside,
25 Broadway,
New York 4, N. Y.,
Counsel for Manufacturers Trust Co., Corporate Trustee, Missouri Pacific Railroad Co. First and Refunding Mortgage, Appellee.

Root, Ballantine, Harlan, Bushby & Palmer,
31 Nassau Street,
New York 5, N. Y.,
Counsel for The Commercial National Bank and Trust Co. of New York, Trustee under Missouri Pa-
[fol. 10] cific Railroad Co. Twenty-Year 5½% Convertible Gold Bonds Indenture, Appellee.

Dorr, Hammond, Hand & Dawson,
61 Broadway,
New York 6, N. Y.,
Counsel for Chemical Bank & Trust Co., Corporate Trustee, Missouri Pacific Railroad Co. Secured Serial Bonds Indenture, Appellee.

Guy A. Thompson,
705 Olive Street,
St. Louis 1, Missouri,
Trustee of Missouri Pacific Railroad Company,
Debtor, Appellee.

Russell L. Dearmont,
705 Olive Street,
St. Louis 1, Missouri,
Counsel for Guy A. Thompson, Trustee, Appellee.

Cravath, Swaine & Moore,
15 Broad Street,
New York 5, N. Y.,
Counsel for Bondholders Protective Committee, New Orleans, Texas & Mexico Railway Company First Mortgage Bonds and Income Bonds, Appellee.

Affidavit of Mailing

State of New York,
County of New York.—ss.:

Michael J. Walsh, being duly sworn, deposes and says: I am a Clerk in the office of Cadwalader, Wickersham & Taft, the attorneys for the Group of Institutional Investors [fol. 11] holding First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company, one of the appellees in the above entitled causes, and I am over the age of twenty-one years.

That on the 14th day of April 1947, I served the Motion, of which the attached is a copy by depositing in the post office box regularly mantained by the United States Government in the building known as No. 14 Wall Street, in the Borough of Manhattan, City of New York, in a properly post-paid and sealed wrapper one copy of said Motion directed to each person to whom the Notice of Motion is addressed.

MICHAEL J. WALSH.

Sworn to before me this 14th day of April, 1947.

EDWARD J. O'NEIL,
Notary Public in the State of New York.
Residing in Bronx County.
Bronx Co. Clk's No. 18, Reg. No. 43-0-8.
(Seal) N. Y. Co. Clk's. No. 44, Reg. No. 118-0-8.
Nassau Co. Clk's. No. 1-0-48, Kings Reg. No. 132-0-3.
Certificate filed in Westchester County.
Commission Expires March 30, 1948.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 16, 1947.

[fol. 12] (Notice of Motion of Appellee Convertible Bondholders Group to dismiss appeals in Nos. 13377, 13378 and 13379.)

Please take notice that the undersigned will move to dismiss these appeals before this Court (Division No. 1) at the Uptown Post Office Building, Fifth and Market Streets, St. Paul, Minnesota, on the 8th day of May, 1947, at the hearing of the above entitled appeals or as soon thereafter as counsel can be heard upon the grounds set forth in pages 7, 8, 9 and 10 of the Brief of Convertible Bondholders Group, Appellees filed in this Court and dated January 10, 1947.

Dated, April 21, 1947.

HARRY KIRSHBAUM,
67 West 44th Street,
New York 18, N. Y.,

EDWIN J. BEAN,
Paul Brown Bldg.,
St. Louis, Mo.,
Attorneys for Convertible Bondholders Group, Appellees.

To:

Clerk of the United States Circuit
Court of Appeals, Eighth Circuit,
U. S. Post Office Bldg.,
5th & Market Streets,
St. Paul, Minn.

Wm. H. Biggs,
319 N. Fourth Street,
St. Louis, Missouri.

Maxwell Brandwen,
30 Broad Street,
New York 4, N. Y.,
Counsel for Andrew W. Comstock, et al., Appellants.

[fol. 13] James J. O'Brien and Daniel Lowenthal,
1732 Bankers Securities Bldg.,
Philadelphia, Pennsylvania,
Counsel for Harry W. Harrison, et al.,
Holders of Preferred Stock, Appellees.

Luther M. Walter,
2106 Field Bldg.,
Chicago, Illinois,
Counsel for Protective Committee for Holders of Missouri Pacific Common Stock, Appellees.

White & Case,
14 Wall Street,
New York 5, N. Y.,
Counsel for Alleghany Corporation, Appellee.

Carl O. Hoffman,
30 Broad Street,
New York 4, N. Y.,
Counsel for The Continental Bank & Trust Company of New York, Successor Corporate Trustee, Missouri Pacific Railroad Co. General Mortgage, Appellee.

Chadbourne, Wallace, Parke & Whiteside,
25 Broadway,
New York 4, N. Y.,
Counsel for Manufacturers Trust Co., Corporate Trustee, Missouri Pacific Railroad Co. First and Refunding Mortgage, Appellee.

Root, Ballantine, Harlan, Bushby & Palmer,
31 Nassau Street,
New York 5, N. Y.,
Counsel for The Commercial National Bank and Trust Co. of New York, Trustee under Missouri Pacific Railroad Co. Twenty-Year 5½% Convertible Gold Bonds Indenture, Appellee.

[fol. 14] Dorr, Hammond, Hand & Dawson,
61 Broadway,
New York 6, N. Y.,
Counsel for Chemical Bank & Trust Co., Corporate Trustee, Missouri Pacific Railroad Co. Secured Serial Bonds Indenture, Appellee.

Guy A. Thompson,
705 Olive Street,
St. Louis 1, Missouri,
Trustee of Missouri Pacific Railroad Company, Debtor, Appellee.

Russell L. Dearmont,
705 Olive Street,
St. Louis 1, Missouri,
Counsel for Guy A. Thompson, Trustee, Appellee.

Cravath, Swaine & Moore,
15 Broad Street,
New York 5, N. Y.,
Counsel for Bondholders Protective Committee, New Orleans, Texas & Mexico Railway Company First Mortgage Bonds and Income Bonds, Appellee.

W. Lloyd Kitchel,
Charles W. McConaughy,
14 Wall Street,
New York 5, N. Y.,
Jacob Chasnoff,
408 Pine Street,
St. Louis 2, Mo.,
Attorneys for Institutional Investors of First and Refunding Mortgage Bonds.

Sanford H. E. Freund,
20 Exchange Place,
New York 5, N. Y.,
Attorney for Protective Committee for General Mortgage Bondholders.

[fol. 15] Affidavit of Service

State of New York,
County of New York.—ss.:

Lee Behrend, being duly sworn, deposes and says that on the 22nd day of April, 1947, she served the within Motion to Dismiss Appeals, upon the attorneys for parties to the within appeal by depositing a true copy of the same securely enclosed in a postpaid wrapper in the post office box regularly maintained by the United States Government at 67 West 44th Street, in the Borough of Manhattan, City and State of New York, directed to each of said attorneys at the addresses last given by them upon the preceding papers served by them in the within proceeding.

Deponent is not a party of said proceeding.

LEE BEHREND.

Subscribed and sworn to before me this 23rd day of April, 1947.

SOLOMON BLATT,
Notary Public in the State of New York Residing in Bronx Co.
Bronx Co. Clk's No. 246, Reg. No. 413-B-8.
Certified in N. Y. Co. No. 1536, Reg. No. 1213-B-8.
Commission Expires March 30, 1948.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 24, 1947.

[fol. 16] (Order of Submission in Causes Nos. 13376, 13377, 13378 and 13379.)

May Term, 1947.
Thursday, May 8, 1947.

These causes were called for hearing in their regular order and argument was made by counsel as follows: Mr. Maxwell Brandwen for appellants; Mr. Charles W. McConaughy for appellees, Group of Institutional Investors, etc., et al., and Mr. Harry Kirshbaum for appellees, Convertible Bondholders Group. Mr. Sanford H. E. Freund stated in open Court that appellees, Bondholders Protective Committee, Missouri Pacific Railroad Company General Mortgage, joined in the brief of Mr. McConaughy and

now adopts Mr. McConaughy's argument. Mr. Marion Pierce advised the Court that Mr. Luther M. Walter, attorney for appellees Charles H. Thornton and A. J. Sevin, constituting a Protective Committee, etc., could not appear and therefore submitted his case on his brief. Mr. Pierce then made a short statement to the Court on behalf of the Missouri Pacific Railroad Company, Debtor.

Thereupon, these causes were submitted on the merits and briefs of counsel for the respective parties, and also on the motion in Nos. 13,377, 13,378 and 13,379 of the Group of Institutional Investors, etc., to dismiss the appeals with Memorandum in support and the brief of appellants in opposition to the motion to dismiss. Mr. Kirshbaum for Convertible Bondholders Group joined in the motion of Group of Institutional Investors, etc., to dismiss.

(Opinion in Case No. 13,376.)

United States Circuit Court of Appeals

Eighth Circuit.

No. 13,376.

Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Appellees.

} Appeal from the District Court of the United States for the Eastern District of Missouri.

[August 28, 1947.]

Mr. Maxwell Brandwen (Mr. William H. Biggs and Mr. Phillip I. Blumberg on the brief) for Appellant.

Mr. Charles W. McConaughy (Mr. W. Lloyd Kitchel, Mr. Jacob Chasnoff and Messrs. Cadwalader, Wickersham & Taft were with him on the brief) for appellee Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company.

Mr. Sanford H. E. Freund (Messrs. Shearman & Sterling & Wright were with him on the brief) for appellee Bondholders Protective Committee, Missouri Pacific Railroad Company General Mortgage.

Mr. Harry Kirshbaum (Mr. Edwin J. Bean and Mr. John E. Stone were with him on the brief) for appellee Convertible Bondholders Group.

Mr. Luther M. Walter and Miss Helen W. Munsert submitted brief for appellees Charles H. Thornton and A. J. Sevin, Constituting a Protective Committee for Holders of Common Stock of Missouri Pacific Railroad Company.

Mr. Marion Pierce for Missouri Pacific Railroad Company, Debtor.

Before GARDNER, WOODROUGH, and THOMAS, Circuit Judges.

WOODROUGH, Circuit Judge, delivered the opinion of the Court.

This appeal is taken by Andrew W. Comstock to reverse an order (No. 2604-A) entered January 22, 1946, in the proceedings for the reorganization of the Missouri Pacific, the New Orleans, Texas and Mexico Railway Company, and a number of other affiliated railroad corporations,

under Section 77 (11 U.S.C.A. Sec. 205), begun in March, 1933. The order followed upon a separate hearing by the court of certain of the separately numbered objections and claims for equitable treatment which were included among many others in the objections and plea for equitable treatment filed by Comstock as an owner of 5¼% Missouri Pacific Secured Serial bonds secured by pledge of New Orleans stock against the plan of reorganization then before the court. The objections passed on after the separate hearing were identified as "Comstock's objection 19 and related objections dependent thereon." On consideration of the voluminous evidence adduced on the issues thereby presented, the court found the facts against the objector, and determined the plan to be fair and equitable in so far as those objections and claim of Comstock are concerned. The identified objections and claim for equitable treatment based thereon were denied and Comstock appeals.

It appears that the Missouri Pacific acquired the controlling interest in the capital stock of the New Orleans at the end of 1924 and at times relevant here owned from 58 to 93 percent of the total $15,000,000 par value of such stock, and from January 1925, until simultaneous commencement of reorganization proceedings in bankruptcy of both corporations in 1933, it managed the affairs of the New Orleans through Missouri Pacific officers who were given corresponding positions in the New Orleans corporation. An expansion program for both companies was carried on and throughout the course of operations the Missouri Pacific made advancements for improvements and betterments to the New Orleans. Some were repaid, but in February 1933, the New Orleans filed its application with the Interstate Commerce Commission under Section 20a of the Transportation Act (49 U.S.C.A. Sec. 20a (2)), showing that it was indebted to the Missouri Pacific for an accumulation of such advances over a period of years remaining unpaid in the sum of $10,355,226.78, and that it had

been requested by the Missouri Pacific to issue demand notes therefor in the amount of $9,955,226.78 to the Missouri Pacific. It had partially complied by issuing one such note for $400,000.00, and one for $2,498,500, and after hearing the Commission made its finding as required by the statute,[1] 49 U.S.C.A. Sec. 20a (2), and authorized New Orleans to issue to the Missouri Pacific a note for the remaining $7,456,726.78. So that at the time of the bankruptcy of the New Orleans on the same date as that of the Missouri Pacific the notes of the New Orleans to the Missouri Pacific in the sum of $10,355,226.78 were outstanding and unpaid. Under authorization of the Interstate Commerce Commission, granted after hearing, the Missouri Pacific had pledged two of the notes aggregating $9,955,-226.78 as security for loans made to it by the Reconstruction Finance Corporation. An additional pledge was made to Railroad Finance Corporation.

After appointment of the trustees for the railroads and on August 29, 1938, an officer of the Missouri Pacific filed claim for that company against the New Orleans for the amount of the notes, plus an item of advancement of $210,-000.00, aggregating the amount of $10,565,226.78, describing the consideration as "cash advances for operation, interest payments, etc., at various times from March 1929 to February 1933, both inclusive." The items which made up the total $10,565,226.78 were clearly specified and evidence of the validity of the debt as consideration for the notes was adduced before the Commission at an early stage of these Section 77 proceedings, and the obligation was deemed to be valid and ahead of New Orleans' stockholder

[1] " * * * that the issue by the New Orleans, Texas & Mexico Railway Company of a note or notes in an aggregate amount not exceeding $7,456,726.78, as aforesaid, (2) is for a lawful object within its corporate purposes, and compatible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose." New Orleans, Texas & Mexico Railway Company Notes, Finance Docket No. 9817; 189 ICC 600, 601, (1933) (R. 20839-20840)

interest in all of the accountings, computations and adjustments resulting in the plan of reorganization determined by the Commission and approved by the court in 1940. It has also been so considered by the Commission in the plan of reorganization before the court at the time of the hearing and order now appealed from.

It appears that in 1926 the Missouri Pacific issued and caused to be sold to the public its 5¼% Secured Serial Bonds in the amount of $13,156,000, secured by the pledge of $1000.00 par value of New Orleans capital stock for each $1000.00 principal amount of outstanding bonds, so that the officers who were put in charge of the affairs of both corporations came under fiduciary obligation to the creditors and the stockholders of each company to handle honestly the affairs of each.

Comstock owns some of said 5¼% Secured Serial Bonds so secured by the pledge of the New Orleans capital stock, and by virtue of his ownership of said bonds he has an interest as a creditor of the Missouri Pacific in the payment of his bonds and the interest thereon, and also an interest in the capital stock of the New Orleans pledged to secure the bonds. On November 22, 1944, he filed his objections to the plan of reorganization and plea for equitable treatment on the basis of those interests. Certain of his objections contained charges of mismanagement of the Missouri Pacific to his detriment as a bondholding creditor of that corporation, but the separately numbered objections here involved relate to wrongs which he alleges were done by the Missouri Pacific to the New Orleans to the detriment of his interest in the pledged stock of that company.

By his objections "Numbered 19 and related objections," Comstock charged that during the period when the affairs of the New Orleans were controlled by its majority stockholder the Missouri Pacific, between the end of 1924 and the bankruptcy in 1933, the Missouri Pacific management

caused the New Orleans to pay dividends illegally out of capital and to improvidently declare and pay dividends unjustified by the business and condition of the New Orleans; improperly loaned money to it for the purpose of enabling it to pay dividends; involved it (the New Orleans) in expansion and improperly made advancements to it and caused it to assume indebtedness growing out of expansion; caused it to be operated with unfair advantage to the Missouri Pacific and loss to itself, and generally mismanaged it and committed spoliation and waste of its property and interests to the financial detriment of the New Orleans and for the benefit of the Missouri Pacific. There is also a charge that the trustee for the New Orleans, who is also trustee for the Missouri Pacific, failed to perform his duties as trustee for the New Orleans, to the detriment of New Orleans stock interest. Although an Exhibit "A" attached to the objections assumed to set forth details, the charges remained sweeping and general in form with few exceptions.[3]

The objector prayed that the Missouri Pacific claim for $10,565,227 and interest against the New Orleans be disallowed; that it be determined that the New Orleans was not indebted to the Missouri Pacific, and in the alternative, that all claims of the Missouri Pacific against the New Orleans be subordinated in the reorganization to the New Orleans capital stock interest.

The allegations of breaches of obligations on the part of the Missouri Pacific were traversed in pleadings of other parties in interest. The main burden of producing witnesses and evidence to justify the handling of the affairs of the New Orleans by the Missouri Pacific during the period of Missouri Pacific management and to prove the

[3]The Exhibit "A" also included excerpts from a report of a subcommittee of the United States Senate on the subject of Missouri Pacific System—Inter Company Dividends and Advances, published about July 29, 1940, which criticized Missouri Pacific management of the New Orleans.

$10,565,226.78 indebtedness of the New Orleans to the Missouri Pacific was carried at the trial by the Group of Institutional Investors Holding First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company and The Protective Committee for the holders of General Mortgage Bonds of Missouri Pacific Railroad Company. They recognized fully the fiduciary nature of the obligation which law and equity attributed to the Missouri Pacific by reason of its pledge of the capital stock of the New Orleans to secure the 5¼% Serial Bonds while the New Orleans was under its management as majority stockholder, and that by the terms of the pledge the Missouri Pacific was entitled to receive itself only the dividends (lawfully and properly declared) of the New Orleans stock and was required as to the corpus of said stock to honestly manage the corporate affairs and to exercise honest judgment and good faith to preserve the stock interest inviolate.

Comstock did not question or deny that the New Orleans had executed its negotiable promissory notes to the Missouri Pacific which were outstanding at the time of the trial drawing interest, and conceded that the Reconstruction Finance Corporation as an innocent holder thereof in pledge could hold the New Orleans for their face amount and interest, but his contention was that by reason of its wrongdoings the Missouri Pacific either had no valid claim or that such claim as it had should be subordinated to the capital stock interest. He did not assert or tender evidence to show that any specified individuals working for the New Orleans or the Missouri Pacific, or both companies, had misappropriated or wrongfully diverted to their own use any of the assets or business of the New Orleans to the detriment of stockholders. He tendered no evidence to show that the plan of Missouri Pacific system expansion, including expansion and improvement of the New Orleans, and for the financing thereof, adopted and carried through by the Missouri Pacific, was in itself fraudulent or reckless

and improvident. As to the New Orleans, the plan contemplated that the Missouri Pacific would advance money to the New Orleans for betterments and additions on short time loans, and that at intervals when the indebtedness became of sufficient size bond issues would be sold to refund it. The worst of the depression came coincidentally with the time when such refunding was expected to be made and made the refunding impossible.

From testimony frankly given by himself, and on the face of the record, it clearly appears as to the case Comstock presented to the court on the objections herein involved that after the report of the Senate subcommittee which criticized the Missouri Pacific management of the New Orleans, and in 1940, Comstock bought a few of the 5¼% Serial bonds at about 10 cents on the dollar and then employed an accountant to make studies of the accounts, records and reports of Missouri Pacific management of the New Orleans and based his charges on the accountant's studies. He tendered no extraneous or newly discovered evidence. As the period of Missouri Pacific alleged mismanagement of the New Orleans (1925 to 1933) had expired many years before Comstock acquired his interest in New Orleans stock, a court would not ordinarily have felt obliged at his instance to try the merits of charges of mismanagement committed in long past years and claimed to be provable by contemporaneous records which were at all times accessible. It would not sanction such buying into a lawsuit.

But here the plan for Missouri Pacific reorganization was before the court to be approved or disapproved, according to whether it was or was not fair and equitable. The proposed plan included as one of its essential postulates that the New Orleans was indebted to the Missouri Pacific in a sum which with accumulated interest amounted to around eighteen million dollars. No judicial determina-

tion upon the validity of the debt had ever been made in any adversary proceedings throughout the thirteen year course of the Section 77 proceedings and bonds like Comstock's are outstanding in many hands aggregating some $13,500,000. Although the court was of opinion that not only Comstock but all other owners of the Missouri Pacific 5¼% Serial Bonds secured by New Orleans stock who had at all times trustee representation and in great part representation by counsel, had been guilty of laches in failing for so many years to assert and present proof and try out before the Commission and the court the alleged invalidity of the debt almost entirely evidenced by the notes,[3] it concluded that judicial adjudication should be made as to the debt and that the court should, and therefore it did, hear the evidence covering the whole period of management of the New Orleans by the Missouri Pacific, and it tried out the whole case and all the charges presented by Comstock on the merits.

The expert accountant called by Comstock produced a large number of exhibits which he had prepared from the books, records and reports of the individual companies and explained in connection with them the inferences he had drawn from his studies and expressed his opinions tending to support the Comstock charges. He centered his attack largely on that part of the accounting system of the railroads through which the New Orleans and its fourteen subsidiary railroads had been treated as a unit for financing purposes and the financial condition indicated by consolidated balance sheets. By disregarding the system character of all the Gulf Coast Lines held under New Orleans ownership he inferred a much less favorable financial position for the New Orleans than was shown by its consolidated balance sheets. He had no personal knowledge

[3]There was also at all times a substantial minority stockholding interest in the New Orleans with means to keep informed of the affairs of the regulated railroad corporation.

of the railroad operations or transactions covered by his testimony.

The Group of Institutional Investors Holding First and Refunding Mortgage Bonds of Missouri Pacific and The Protective Committee for the holders of General Mortgage bonds of Missouri Pacific to sustain the burden of Missouri Pacific defense called as their witnesses on the trial the railroad men who had engaged, each in his own department, in all of the transactions and railroad operations and the records made thereof throughout the period involved, and they testified of and concerning matters with which they were intimately familiar. Also Mr. William Wyer, who after his graduation from Yale and Massachusetts Institute of Technology served in railroad construction and operation for the government during World War I, and in U. S. Railroad Administration during Federal Control, and afterwards in various positions in the Division of Operations, Division of Accounts and Assistant to the Comptroller. From 1920 to 1927 he occupied important positions with the Southern Railroad Company and the Denver Rio Grande and Western, the latter being "fifty percent. owned by the Missouri Pacific so it was considered a part of the Missouri Pacific System." In February, 1929, he became Assistant to the Chairman of the Board of Directors of the Missouri Pacific who was also Chairman of the Board of the New Orleans, and later in the year he became Secretary and Treasurer of the Missouri Pacific and an officer on all the subsidiaries, except as to the Texas and Pacific he was such officers for only six years. He handled a great many of the financial matters involving the Missouri Pacific and the New Orleans under the supervision of the Chairman of the Board of the Missouri Pacific. In 1933 he started studies which have provided substantially all of the studies upon which the various plans of reorganization have been based. He was at the time of testifying the chief executive officer of the Central Railroad of New Jersey.

He was thoroughly informed and conversant with the Missouri Pacific policies of system operation and of expanding and financing, and with the railroad operations and the financial transactions upon which the validity or invalidity of the debt in controversy depend, as well as the accounting and reporting system maintained for disclosing and reporting them. He had an important part in what was done, was in touch with substantially the whole course of the management of the New Orleans under attack and he gave his extensive testimony upon direct and cross examination with obvious understanding of its relevancy and importance. His testimony, supported by many accounting and summarizing exhibits, was to the effect that Missouri Pacific management of New Orleans was honest and was beneficial to New Orleans.

Judge Moore, presiding at the trial, has exercised the jurisdiction in these Section 77 proceedings through most of their course, and his questions, comments and directions reflect his close attention to and understanding of the testimony and its application through the trial. His written opinion is reported 64 F. Supp. 64. His findings of facts and conclusions of law were drawn with care and thoroughness, and appear to us to be responsive to all the issues presented by the objections here involved and the evidence that was adduced, and the appellant has not called our attention to any refusal on the part of the court to make findings in respect to any other issues claimed to have been presented. The vast extent of the railroad business carried on by the Missouri Pacific and the New Orleans during the long past period of alleged mismanagement and the intricate corporate structures of the railroads, inevitably presented most serious problems in the attempts of accountants to picture what their course of operations and financial transactions had been. The New Orleans had in some respects the character of a holding company in that it operated itself only a small fraction (around 11%) of the

railroad mileage of its railroad system but owned the stocks and securities of some fourteen other railroad companies and was the only one of the group of railroads comprising its railroad system which had any relatively substantial amount of securities outstanding in the hands of the public. For financing purposes the individual roads in the group were dependent upon the New Orleans which, acting for the group in respect to financing, presented the necessary unitary functioning principal. There was fundamental controversy as to what inferences should be drawn from the available accounts to establish the true financial condition of the New Orleans at different times within the period and to establish and present the financial results of the railroad operations that were carried on. Mr. Wyer testified that the identified consolidated balance sheets compiled under direction of the Missouri Pacific and New Orleans officers were the summarizing records which were submitted to the Board of Directors to keep its members informed in the discharge of their duties. It was through the use of the consolidated balance sheets that the New Orleans and its affiliated railroads were treated as a unit in the financing of the companies throughout Missouri Pacific management. Though he could not say what went on in the minds of others, his testimony leaves no room to doubt that the Board members well understood how the computations were arrived at and that the members relied on them in the usual course of the financing of the business. He was intimately familiar with all phases of the accounting in which they culminate, and although he admitted that perfection was never attained, his testimony together with that of the railroad officers and employees who did the work, fully justified the trial court's reliance upon the consolidated balance sheets in his findings and conclusions. But the disputes and conflicts of testimony in respect to the accounts and the inferences to be drawn were all issues of fact. The court recognized fully all the

en of obligation imposed by law upon the Missouri
ic in respect to its management of the New Orleans
that if the Comstock charges could be proved and the
tedness in issue was invalid or ought not in equity to
nforced against New Orleans stockholders, the then
ing plan of reorganization could not stand.

mstock's contention that the court erroneously put the
en of proving his charges on him rather than requir-
he Missouri Pacific to proceed first to disprove them,
thout merit. As the execution of the promissory notes
admitted and at least formal proof of all of the items
vancements making up the debt had been in the record
e Section 77 proceedings for many years before the
ng, the court required only that all the records of the
actions that were questioned be made available for the
ng so that there was the equivalent of a full dis-
re by the Missouri Pacific before Comstock was re-
d to proceed with his proof of the charges. In its
gs the court stated the facts as it found them to be
en by the whole evidence. It found in detail and in
that the Missouri Pacific had administered the
s of the New Orleans in good faith to the advantage
t company; had made the advancements to it for prop-
rposes; had not caused dividends to be paid out of
l or improvidently in bad faith, and that the asserted
tedness arose from advancement made by Missouri
ic to New Orleans for betterments and additions and
alid and should be allowed in items specified, and that
an of reorganization based as it was in part on recog-
of the existence of the debt in question, was fair and
able and comformable to the requirements of law re-
ng the participation of the various classes of creditors
tockholders.

this appeal the case is stated for the appellant in
antial disregard of the findings of the trial court and
ically as though the case was here to be tried by this

court de novo on the voluminous evidence. This court must decline to assume that function. We may not set aside the findings of facts which have been made by the trial court, who in this case had more than ordinary opportunity to judge of the credibility of the witnesses, unless such findings were clearly erroneous. F.R.C. 52a; General Orders in Bankruptcy Nos. 36 and 49, 11 U.S.C.A. following Section 53. Though we have considered the appeal sufficient in form to require a complete study of the record and evidence, we are forbidden by the rule to upset those findings which are supported by substantial evidence and are not clearly erroneous nor induced by error of law. Rule 52a is no less controlling because the conflicts of evidence upon which the trial court was required to decide were in the field of accountancy and expert opinions in that field were opposed. Our examination of the record in accordance with the rule has not disclosed any finding which lacks support in testimony of qualified and intelligent witnesses who fully understood the import of what they showed by the exhibits they vouched for or said on the witness stand.

The findings which we sustain cover many printed pages of the record, and to discuss them in connection with the contrary inferences which appellant contends should be drawn from particulars of evidence would extend this opinion to great length to no useful purpose. The Missouri Pacific's two hundred million dollar expansion and improvement plan, its plan for financing the same, the accounting system that was used and by which the directors were kept informed for management purposes, and the whole course of the management of the New Orleans is revealed in the evidence. There is also substantial evidence in the record that the war years tested the effects of the investments for the New Orleans made under Missouri Pacific management and justified them. The findings indicate the opposing contentions made on the trial and cover the particulars of the evidence and indicate the bases of the court's action.

appellant has strenuously urged that the decision of preme Court in *Taylor* v. *Standard Gas & Electric* 6 U.S. 307, requires reversal herein. But we think e court there had to deal with a situation entirely nt. The Supreme Court later said concerning its n in that case as to the subordination which it there d on a parent corporation's claims against the sub-: "This was based on the equities of the case—the of spoliation, mismanagement, and faithless stew-of the affairs of the subsidiary by Standard to the nt of the public investors." *Pepper* v. *Litton*, 308 5, l.c. 308. Here the trial court has found on sub- evidence an exactly contrary situation. The stock New Orleans has been kept intact and of recognized hrough depressions which wiped out vast amounts securities, and on full investigation of the facts the as found the Missouri Pacific's stewardship was and there was no mismanagement or spoliation.

ind no error in the trial court's findings against ck in respect to his charges of dereliction of duty by tee of the New Orleans. Those charges were with-it. The holders of 5¼% Secured Series Missouri bonds at all times had trustee representation and f them were being represented by counsel. The rail-cords were accessible and there was no duty upon tee in reorganization of the New Orleans to initiate y on such speculative litigation as Comstock has ken. He properly caused studies to be made and s to be given parties in interest and acted im-y.

satisfied from our examination of the record that ings of the trial court were not clearly erroneous t on the facts as found the claim of Missouri Pa-s properly allowed and the objections and claim for treatment denied, the order appealed from is

[fol. 33] (Judgment in Cause No. 13376.)

United States Circuit Court of Appeals
Eighth Circuit.

No. 13376—May Term, 1947
Thursday, August 28, 1947.

Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds, Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company,

Bondholders Protective Committee for General Mortgage Bonds of Missouri Pacific Railroad Company,

Missouri Pacific Railroad Company,.

Harry W. Harrison, et al., Holders of Preferred Stock, of Missouri Pacific,

Protective Committee for Holders of Missouri Pacific Common stock,

Alleghany Corporation,

Gerald Axelrod, et al., representing Convertible Bondholders Group,

The Continental Bank & Trust Company of New York, Successor Corporate Trustee, Missouri Pacific Railroad Company General Mortgage,

Manufacturers Trust Co., Corporation Trustee, Missouri Pacific Railroad Company First and Refunding Mortgage,

The Commercial National Bank and Trust Co. of New York, Trustee under Missouri Pacific Railroad Co. Twenty Year 5½% Convertible Gold Bonds Indenture,

Chemical Bank & Trust Company, Corporate Trustee, Missouri Pacific Railroad Co. Secured Serial Bonds,

Guy A. Thompson, Trustee of Missouri Pacific Railroad Company, debtor,

[fol. 34] G. H. Walker, Willard V. King, B. A. Tompkins and George E. Warren, as a Committee representing Holders of First Mortgage Bonds and Income Bonds of New Orleans, Texas & Mexico Railway Company.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

August 28, 1947.

[fol. 35] (Opinion in Causes Nos. 13377, 13378 and 13379.)

United States Circuit Court of Appeals
Eighth Circuit.

No. 13,377.

New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, representing himself and others, etc.,

Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Missouri.

No. 13,378.

Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and others, etc., Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., Appellees.

Appeal from the District Court of the United States for the Eastern District of Missouri.

No. 13,379.

Andrew W. Comstock, Appellant,

vs.

Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, et al., Appellees.

Appeal from the District Court of the United States for the Eastern District of Missouri.

[August 28, 1947.]

Mr. Maxwell Brandwen (Mr. William H. Biggs and Mr. Phillip I. Blumberg on the brief) for Appellants.

Mr. Charles W. McConaughy (Mr. W. Lloyd Kitchel, Mr. Jacob Chasnoff and Messrs. Cadwalader, Wickersham & Taft were with him on the brief) for appellee Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company.

Mr. Sanford H. E. Freund (Messrs. Shearman & Sterling & Wright were with him on the brief) for appellee Bondholders Protective Committee, Missouri Pacific Railroad Company General Mortgage.

Mr. Harry Kirshbaum (Mr. Edwin J. Bean and Mr. John E. Stone were with him on the brief) for appellee Convertible Bondholders Group.

Mr. Luther M. Walter and Miss Helen W. Munsert submitted brief for appellees Charles H. Thornton and A. J. Sevin, Constituting a Protective Committee for Holders of Common Stock of Missouri Pacific Railroad Company.

Mr. Marion Pierce for Missouri Pacific Railroad Company, Debtor.

Before GARDNER, WOODROUGH, and THOMAS, Circuit Judges.

WOODROUGH, Circuit Judge, delivered the opinion of the Court.

These appeals, Nos. 13,377 and 13,378, by Comstock in the names of Guy A. Thompson, Trustee, and in the name of the New Orleans, Texas and Mexico Railway Company, Debtor, were presented upon the same record as the appeal in No. 13,376. They were taken out of precaution to reverse the same order (No. 2604-A) involved in No. 13,376 on the same grounds, to be relied on in the event that some insufficiency of right to review the order should be found in respect to Comstock's appeal taken in his own name as an owner and holder of 5¼ percent Missouri Pacific Secured Serial Bonds. We have accorded review to Comstock and considered the grounds of attack upon the order and affirmed it in No. 13,376, this day decided, and accordingly dismiss these appeals.

The appeal in No. 13,379 is taken from an order denying Comstock's application for leave to appeal from Order No. 2604-A in the name of the railroad or of the trustee and is also dismissed on the same considerations.

[fol. 38] (Judgment in Cause No. 13377.)

United States Circuit Court of Appeals
Eighth Circuit.

No. 13377—May Term, 1947.
Thursday, August 28, 1947.

New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said

New Orleans, Texas and Mexico Railway Company, Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgages 5% Gold Bonds of Missouri Pacific Railroad Company,

Bondholders Protective for General Mortgage Bonds of Missouri Pacific Railroad Company,

Missouri Pacific Railroad Company,

Harry W. Harrison, et al., Holders of Preferred Stock, of Missouri Pacific,

Protective Committee for Holders of Missouri Pacific Common Stock,

Alleghany Corporation,

Gerald Axelrod, et al., representing Convertible Bondholders Group,

The Continental Bank & Trust Company of New York, Successor Corporate Trustee, Missouri Pacific Railroad Company General Mortgage,

Manufacturers Trust Co., Corporation Trustee, Missouri Pacific Railroad Company First and Refunding Mortgage,

The Commercial National Bank and Trust Co. of New York, Trustee under Missouri Pacific Railroad Co. Twenty Year 5½% Convertible Gold Bonds Indenture,

Chemical Bank & Trust Company, Corporate Trustee, Missouri Pacific Railroad Co. Secured Serial Bonds,

[fol. 39] Guy A. Thompson, Trustee of Missouri Pacific Railroad Company, Debtor,

G. H. Walker, Willard V. King, B. A. Tompkins and George E. Warren, as a Committee representing Holders of First Mortgage Bonds and Income Bonds of New Orleans, Texas & Mexico Railway Company.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the appeal from the order of the said District Court complained of, in this cause, be, and the same is hereby, dismissed.

August 28, 1947.

[fol. 40] (Judgment in Cause No. 13378.)

United States Circuit Court of Appeals

No. 13378—May Term, 1947.
Thursday, August 28, 1947.

Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company, Appellant,

vs.

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company,

Bondholders Protective Committee for General Mortgage Bonds of Missouri Pacific Railroad Company,

Missouri Pacific Railroad Company,

Harry W. Harrison, et al., Holders of Preferred Stock, of Missouri Pacific,

Protective Committee for Holders of Missouri Pacific Common Stock,

Alleghany Corporation,

Gerald Axelrod, et al., representing Convertible Bondholders Group,

The Continental Bank & Trust Company of New York, Successor Corporate Trustee, Missouri Pacific Railroad Company General Mortgage,

Manufacturers Trust Co., Corporation Trustee, Missouri Pacific Railroad Company First and Refunding Mortgage,

The Commercial National Bank and Trust Co. of New York, Trustee under Missouri Pacific Railroad Co. Twenty Year 5½% Convertible Gold Bonds Indenture,

[fol. 41] Chemical Bank & Trust Company, Corporate Trustee, Missouri Pacific Railroad Co. Secured Serial Bonds,

Guy A. Thompson, Trustee of Missouri Pacific Railroad Company, Debtor,

G. H. Walker, Willard V. King, B. A. Tompkins and George E. Warren, as a Committee representing Holders of First Mortgage Bonds and Income Bonds of New Orleans, Texas & Mexico Railway Company.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the appeal from the order of the said District Court complained of, in this cause, be, and the same is hereby, dismissed.

August 28, 1947.

[fol. 42] (Judgment in Cause No. 13379.)

United States Circuit Court of Appeals
Eighth Circuit.

No. 13379—May Term, 1947
Thursday, August 28, 1947.

Andrew W. Comstock, Appellant,

vs.

Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor,

Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company,

G. H. Walker, Willard V. King, B. A. Tompkins and George E. Warren, as a Committee representing Holders of First Mortgage Bonds and Income Bonds of New Orleans, Texas & Mexico Railway Company,

Bondholders Protective Committee for General Mortgage Bonds of Missouri Pacific Railroad Company,

Alleghany Corporation.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the appeal from the order of the said District Court complained of, in this cause, be, and the same is hereby, dismissed.

August 28, 1947.

[fol. 43] (Motion of Appellants to Stay Issuance of Mandates in Causes Nos. 13376, 13377, 13378 and 13379.)

In the United States Circuit Court of Appeals,

Eighth Circuit.

Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount of said bonds, Appellant,

No. 13376. vs.

Group of Institutional Investors, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., Appellees.

New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, representing himself and others, etc., Appellant,

No. 13377. vs.

Group of Institutional Investors, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., Appellees.

Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and others, etc., Appellant,
No. 13378. vs.
Group of Institutional Investors, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., Appellees.

[fol. 44] Andrew W. Comstock, Appellant,
No. 13379. vs.
Guy A. Thompson, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, et al., Appellees.

Comes now William H. Biggs, attorney for the respective appellants in the above styled causes, and respectfully states:

1. That on the 28th day of August, 1947 in cause No. 13,376, styled Andrew W. Comstock, etc. vs. Group of Institutional Investors, etc, et al., Division Number One of the United States Circuit Court of Appeals, Eighth Circuit filed its opinion, and an order was entered in accordance therewith, directing that the Order appealed from be affirmed. This Order being Order No. 2604-A of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

On the same day said Division of the United States Circuit Court of Appeals filed an opinion, on which an order was duly entered dismissing the other three appeals, to-wit: No. 13,377, No. 13,378 and No. 13,379.

2. That appellants intend to file in the Supreme Court of the United States a petition or petitions for Writ of Certiorari from said opinions, orders, judgments and decrees entered in the above styled causes.

3. That because of the size and complexity of the Record, appellants respectfully request and desire that the Mandates of this Court as to said appeals be stayed for a period of forty-five days in order that the Record and the Petition for Writ of Certiorari may be prepared, printed and filed with the Clerk of the Supreme Court of the United States.

[fol. 45] Wherefore, petitioner respectfully prays for an order authorizing and directing that the Mandates in the above styled causes be stayed for a period of forty-five (45) days from the 12th day of September, 1947.

Respectfully submitted,

WM. H. BIGGS,
Attorney for Appellants.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Sep. 12, 1947.

(Order Staying Issuance of Mandates in Causes Nos. 13376, 13377, 13378 and 13379.)

September Term, 1947.
Monday, September 15, 1947.

On Consideration of the motion of appellants for a stay of the mandates in these causes for a period of forty-five days from September 12, 1947, pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandates herein be, and the same is hereby, stayed for said period of forty-five days, and if within said period there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition or petitions for writ or writs of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the cases by the Supreme Court.

September 15, 1947.

[fol. 46] (Clerk's Certificate.)

United States Circuit Court of Appeals
Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing transcript composed of six volumes contains

Volume I, consisting of pages a to 680, inclusive, Volume II consisting of pages 681 to 1355, inclusive, and Volume III consisting of pages 20723 to 20790, inclusive of the printed transcript of record, and Volume of Exhibits paged from 1 to 312, inclusive, and Volume II of Exhibits paged from 313 to 362, inclusive, on which the appeals from the District Court of the United States for the Eastern District of Missouri were heard in said Circuit Court of Appeals, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinions, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, being Volume IV, consisting of pages 1 to 47, inclusive, in certain causes wherein Andrew W. Comstock, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds, was Appellant and Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., were Appellees, No. 13376, New Orleans, Texas and Mexico Railway Company, Debtor, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company, was Appellant and Group of Institutional Investors holding [fol. 47] First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., were Appellees, No. 13377, Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, by Andrew W. Comstock, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company, was Appellant and Group of Institutional Investors holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., were Appellees, No. 13378, and Andrew W. Comstock was Ap-

pellant and Guy A. Thompson, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor, et al., were Appellees, No. 13379,

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 18th day of September, A. D. 1947.

Seal
United States
Circuit Court
of Appeals
Eighth Circuit.

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[fol. 48] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 451

ORDER ALLOWING CERTIORARI—Filed January 12, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

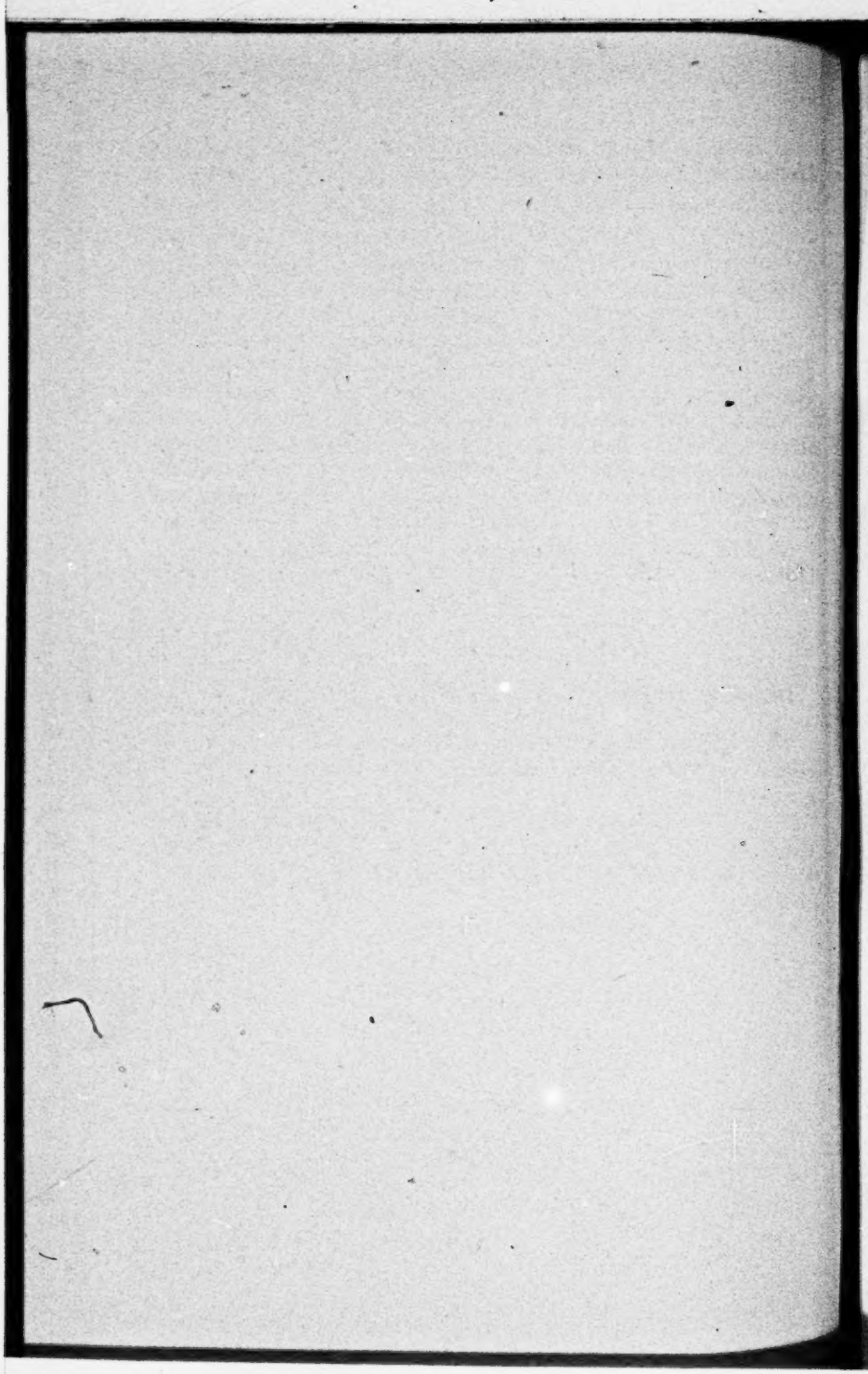
[fol. 49] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 452

ORDER ALLOWING CERTIORARI—Filed January 12, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



[fol. 50] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 453

ORDER ALLOWING CERTIORARI—Filed January 12, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 51] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 454

ORDER ALLOWING CERTIORARI—Filed January 12, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, A HOLDER OF MISSOURI PACIFIC RAILROAD COMPANY 5½% SECURED SERIAL GOLD BONDS, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 452

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 453

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, ETC., PETITIONER,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 454

ANDREW W. COMSTOCK, PETITIONER,

vs.

GUY A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED NOVEMBER 24, 1947.

CERTIORARI GRANTED JANUARY 12, 1948.

United States Circuit Court of Appeals,
EIGHTH CIRCUIT.

No. 13,376. In Bankruptcy.

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,377. In Bankruptcy.

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,378. In Bankruptcy.

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,
Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Appellees.

No. 13,379. In Bankruptcy.

ANDREW W. COMSTOCK,
Appellant,

vs.

GUY A. THOMPSON, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor, et al.,
Appellees.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED MAY 21, 1946.

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22, Statement of Carloadings for all Class One Railroads in the United States for Years 1922 to 1931, etc.....	245	266

	Original	Print
23, Map Showing Companies to be Consolidated into New Companies and The Texas & Pacific Railway Company..	246	287
24, Statement of Gulf Coast Lines and International-Great Northern Railroad Company Relating to Number of Miles of Road Owned and Operated as of December 31, 1943...	247	288
25, Statement of Missouri Pacific Railroad Company Relating to Investment in Road and Equipment from June 1, 1917 to December 31, 1944	248	289
26, Statement of Missouri Pacific Railroad Company Relating to Financing Improvements through Sale of First and Refunding Series "G" Bonds	249	271
27, Statement of Missouri Pacific Railroad Company Relating to Financing Improvements through Sale of First and Refunding Series "H" Bonds	250	273
28, Statement of Missouri Pacific Railroad Company Relating to Financing Improvements through Sale of First and Refunding Series "I" Bonds	251	275
29, Statement of Gulf Coast Lines Relating to Financing Improvements through Sale of First Mortgage Series "D" Bonds	252	277
30, Statement of Gulf Coast Lines Relating to Status of Authorities for Expenditure to February 23, 1939	253	279
31, Statement Relating to Estimated Advances in 1939 by Missouri Pacific Railroad Company to Gulf Coast Lines..	254	280
32, Statement of Missouri Pacific System Relating to Proposed Reorganization as of January 1, 1936	255	281
33, Statement of Gulf Coast Lines Relating to Increase in Investments from January 1, 1938 to November 30, 1939.	256	282
34 to 36, Statements of Gulf Coast Lines Relating to Major Additions and Betterments Financed by Advances from Missouri Pacific Railroad Company from January 1, 1938 to November 30, 1939	257	284
37, Statement of Gulf Coast Lines Relating to Gross Additions and Betterments for the Years 1916 to 1931	267	297
38, Condensed Income Account of Gulf Coast Lines for the Years 1916 to 1943	268	299
39, Statement of Gulf Coast Lines Relating to Condensed Income Account for the Year 1944	269	300
40, Statement of Gulf Coast Lines Relating to Comparison of Revenue, Gross Additions and Betterments, etc., for the Years 1916 to 1931	270	301
41, Statement of Gulf Coast Lines Relating to Charges to Operating Expenses in Connection with Additions and Betterments, January 1, 1925 to December 31, 1944	271	303
42, Statement of Missouri Pacific Railroad Company Relating to Interest Paid on Secured Serial 5½% Bonds, etc..	272	304
43, Statement of St. Louis, Brownsville & Mexico Railway Company Relating to Balance Sheets for the Years 1924 to 1931	273	305
44, Statement of The Beaumont, Sour Lake & Western Railway Company Relating to Balance Sheets for the Years 1924 to 1931	274	307
45, Statement of The St. Louis, Brownsville & Mexico Railway Company Relating to Analysis of Profit and Loss and Dividends Declared from 1925 to 1931	275	309
46, Statement of The St. Louis, Brownsville & Mexico Railway Company Relating to Analysis of Dividends Declared and Paid from 1924 to 1932	276	311
47, Statement of St. Louis, Brownsville & Mexico Railway Company Relating to Net Income by Months from 1930 to 1932	277	312

[fol. 1] Comstock Exhibit 1.

Group Exhibit 11.

In the
District Court of the United States
Eastern Division, Eastern Judicial
District of Missouri

No. 6935

Claim No. 1553
Received this date
Aug. 29 1933
A. T. Cole, Assistant Secretary

In the Matter of

Missouri Pacific Railroad Company, Debtor. } In Proceedings for the Reorganization of a Railroad.

Proof of Claim

(1) Name of the specific debtor company against which claim is filed: * * * *

New Orleans, Texas and Mexico Ry. Co.

(2) Claimant's name and address (if corporation, state where organized, and if partnership, names of the partners)

Missouri Pacific Railroad Company
St. Louis, Mo.

(3) Nature of the claim, dates of accrual, and amounts of the various items (state in such detail as shall definitely advise the debtor of the particulars thereof and distinguish the claims from other claims of like nature).

Cash advances for operation, interest payments, etc. at various times from March, 1929 to February, 1933, both

inclusive, in amount of $10,565,226.78. These advances are evidenced by notes to the extent of $10,355,226.78, as follows:- Note dated April 15, 1932 payable on or before April 15, 1934 with interest at 6%.....$ 400,000.00

Demand Note dated January 27, 1933 with interest at 5½%..... 2,498,500.00

Demand Note dated February 28, 1933 with interest at 5½%..... 7,456,726.78

$10,355,226.78

The two demand notes aggregating $9,955,226.78 are pledged as partial security for loans from the Reconstruction Finance Corporation.

(4) If suit is pending on such claim, state name of court, amount of judgment, if any, and present status.

None.

(5) Describe any security for payment of claim, partial payments, offsets or counter-claims due the debtor, and if any lien, priority, or preferential classification is claimed, the facts respecting same.

None.

(6) Said debtor is justly and truly indebted to this claimant in the sum of $10,565,226.78, by reason of the claim or claims above described.

MISSOURI PACIFIC R. R. CO., Claimant

By F. P. JOHNSON
Vice-President.

Subscribed and sworn to before me this 28th day of August, 1933.

F. J. C. SATTELL
Notary Public.

My commission expires October 3, 1935.

[fol. 2] Comstock Exhibit 2.

Missouri Pacific Railroad Company—1923

Officers:

W. H. Williams, Chairman of Board
L. W. Baldwin, President
J. G. Drew, Vice-President
O. B. Huntsman, Vice-President
Finley J. Shepard, Vice-President
Edward J. White, Vice-President
J. M. Egan, Vice-President
C. E. Perkins, Vice-President
H. L. Utter, Secretary & Treasurer

Directors:

L. W. Baldwin
B. F. Bush
G. W. Niedringhaus
J. G. Lonsdale, St. Louis
M. C. Brush
A. V. Davis
J. W. Raskob
C. H. Sabin
F. J. Shepard
H. L. Utter
J. E. Davey
H. H. Porter
W. H. Williams, New York
R. L. Williams, Baltimore
C. E. Ingersoll, Philadelphia
W. T. Kemper, Kansas City
J. W. Gardiner, Lake Charles, La.

(Source: Moody's—Railroads 1924, p. 683)

[fol. 3] Comstock Exhibit 3.

New Orleans, Texas & Mexico Railway Co.—1923

Officers:

G. H. Walker, [Chairma,] New York
J. S. Pyeatt, President, Houston, Texas
Roy Terrell, Vice-President & Secretary, New Orleans, La.
A. T. Cole, Treasurer & Asst. Secretary, Houston, Texas
M. Eckert, Auditor
G. E. Warren, Asst. Treasurer & Asst. Secretary, New York
Frank Andrews, General Counsel, Houston, Texas
C. A. deGersdorff, General Attorney, New York
W. G. Choate, General Manager, Houston, Texas

Directors:

Stedman Buttrick, Boston, Mass.
E. N. Potter
Carl A. deGersdorff
Elisha Walker
Willard V. King
G. E. Warren
G. H. Walker, New York
N. A. McMillan
W. K. Bixby
M. E. Singleton, St. Louis, Mo.
Alexander Berger, Maryton, Va.
J. D. O'Keefe
C. B. Fox, New Orleans, La.
Frank Andrews
J. S. Pyeatt, Houston, Texas.

(Source: Moody's—Railroads 1924, p. 717)

[fol. 4] Comstock Exhibit 4.

Missouri Pacific Railroad Company—1924

Officers:

W. H. Williams, Chairman of Board
L. W. Baldwin, President
J. G. Drew, Vice-President
O. B. Huntsman, Vice-President
Finley J. Shepard, Vice-President
Edward J. White, Vice-President
H. R. Safford, Vice-President
C. E. Perkins, Vice-President
H. L. Utter, Secretary & Treasurer
J. Cannon, General Manager

Directors:

L. W. Baldwin
B. F. Bush
G. W. Niedringhaus
J. G. Lonsdale, St. Louis
M. C. Brush
A. V. Davis
J. J. Raskob
C. H. Sabin
F. J. Shepard
H. L. Utter
J. E. Davey
H. H. Porter
W. H. Williams, N. Y.
R. L. Williams, Baltimore
C. E. Ingersoll, Philadelphia
W. T. Kemper, Kansas City
J. W. Gardiner, Lake Charles, La.

(Source: Moody's 1925—Railroads, p. 592)

[fol. 5] Comstock Exhibit 5.

New Orleans, Texas & Mexico Railway Company—1924

Officers:

W. H. Williams, Chairman, Lyon Mountain, N. Y.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
W. G. Vollmer, E. M. Durham, Jr., Assistant to President, St. Louis, Mo.
J. E. Anderson, Assistant to Executive Vice-President, Houston, Tex.
Roy Terrell, Vice-President & Secretary, New Orleans, La.
H. L. Utter, J. E. Davey, Vice-President, Asst. Secretary and Asst. Treasurer, New York.
A. T. Cole, Treasurer & Asst. Secretary, Houston, Tex.
M. Eckert, Auditor, Houston, Tex.
G. E. Warren, Asst. Treasurer & Asst. Secretary
C. A. de Gersdorff, General Counsel, New York
W. G. Choate, General Manager
Frank Andrews, General Solicitor, Houston, Tex.

Directors:

W. H. Williams, Lyon Mountain, N. Y.
E. N. Potter
Carl A. de Gersdorff
G. E. Warren
G. H. Walker
M. C. Brush
H. H. Porter
J. J. Raskob
C. H. Sabin
F. J. Shepard, N. Y.
L. W. Baldwin, St. Louis, Mo.
Alexander Berger, Maryton, Va.
C. B. Fox, New Orleans, La.
Frank Andrews
H. R. Safford, Houston, Tex.

(Source: Moody's 1925—Railroads, p. 605)

[fol. 6] **Comstock Exhibit 6.**

International-Great Northern Railroad Company—1924

Officers:

W. H. Williams, Chairman, Lyon Mountain, N. Y.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
W. G. Vollmer, E. M. Durham, Jr., Asst. to President, St. Louis, Mo.
A. R. Howard, Vice-President, Treasurer & Secretary, Palestine, Tex.
H. L. Utter, J. E. Davey, Earle Bailie, Vice-President, Asst. Secretary & Asst. Treasurer, New York.

Directors:

W. H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
E. Bailie
L. H. Kronthal, N. Y.
H. R. Safford
Frank Andrews, Houston, Tex.
Harry Landa, New Braunfels, Tex.
R. E. Harding, Fort Worth, Tex.
J. L. Lancaster, Dallas, Tex.

(Source: Moody's 1925—Railroads, p. 614)

[fol. 7] **Comstock Exhibit 7.**

St. Louis, Brownsville & Mexico Railway Co.—1924

Officers:

W. H. Williams, Chairman, Lyon Mountain, N. Y.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
R. J. Kleberg, Vice-President, Kingsville, Tex.
A. T. Cole, Secretary & Treasurer, Houston, Tex.

Directors:

M. Eckert
G. H. Walker
Frank Andrews
J. E. Anderson
R. J. Kleberg
C. M. Armstrong
A. B. Pierce
W. G. Choate, Houston, Tex.
W. H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.

(Source: Moody's 1925—Railroads, p. 620)

[fol. 8] Comstock Exhibit 8.

The Beaumont, Sour Lake & Western Railway Company—1924

Officers:

W. H. Williams, Chairman, Lyon Mountain, N. Y.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
J. S. Rice, Vice-President
A. T. Cole, Secretary & Treasurer, Houston, Tex.

Directors:

W. H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
R. W. Wier
M. Eckert
J. S. Rice
Frank Andrews
W. G. Choate
J. E. Anderson, Houston, Tex.
B. R. Norvell, Beaumont, Tex.

(Source: Moody's 1925—Railroads, p. 611)

[fol. 9] Comstock Exhibit 9.

Missouri Pacific Railroad Company—1925

Officers:

William H. Williams, Chairman of Board of Directors and Executive Committee, New York;
L. Warrington Baldwin, Pres., St. Louis, Mo.;
Finley J. Shepard, Vice-Pres., New York;
J. G. Drew, Vice-Pres.;
Edward J. White, Vice-Pres. and Gen. Solicitor;
C. E. Perkins, Vice-Pres. in Charge of Traffic;
F. P. Johnson, Vice-Presid., St. Louis, Mo.;
H. R. Safford, Vice-Pres., Houston, Tex.;
O. B. Huntsman, Vice-Pres., Asst. Sec. & Asst. Treas., New York;
W. G. Vollmer and E. M. Durham, Jr., Assts. to Pres., St. Louis, Mo.;
Paul D. Cravath, General Counsel;
Carl A. de Gersdorff, Asst. Gen. Counsel, New York;
J. M. Niven, Gen. Aud., St. Louis, Mo.;
H. L. Utter, Sec. & Treas., New York;
F. W. Irland, Asst. Sec.;
F. M. Hickman, Local Treas.;
J. Cannon, Gen. Mgr.;
E. A. Hadley, Chief Engineer;
W. A. Hopkins, Gen. Purchasing Agent, St. Louis.

Executive Committee:

William H. Williams (Chairman)
Finley J. Shepard
Matthew C. Brush
Charles H. Sabin
L. Warrington Baldwin
John J. Raskob
H. Hobart Porter

Directors:

William H. Williams
Finley J. Shepard
Matthew C. Brush
Arthur V. Davis
Charles H. Sabin
H. L. Utter
John J. Raskob
H. Hobart Porter
J. E. Davey, New York;
L. Warrington Baldwin
B. F. Bush
John G. Lonsdale
Geo. W. Niedringhaus, St. Louis, Mo.;
Charles E. Ingersoll, Philadelphia, Pa.;
R. Lancaster Williams, Baltimore, Md.
William T. Kemper, Kansas City, Mo.;
James W. Gardiner, Lake Charles, La.

(Source: Poor's 1926—Railroad & Bank Section, p. 276)

[fol. 10] Comstock Exhibit 10.

New Orleans, Texas & Mexico Railway Company—1925

Officers:

William H. Williams, Chairman of Board, Lyon Mountain, N. Y.;
L. Warrington Baldwin, President, St. Louis, Mo.;
H. R. Safford, Executive Vice-Pres., Houston, Texas;
Roy Terrell, Vice-Presid. & Secretary, New Orleans, La.;
A. T. Cole, Treas., Houston, Texas;
H. L. Utter, Asst. Treas., New York, N. Y.;
Frank Andrews, Gen. Solicitor, Houston, Texas;
Carl A. de Gersdorff, General Counsel, New York, N. Y.;
M. Eckert, Auditor;
W. G. Choate, General Manager;
C. S. Kirkpatrick, Chief Engineer;
J. H. Lauderdale, Purchasing Agent, Houston, Texas;
G. C. Kennedy, Division Supt., DeQuincy, La.

Directors:

William H. Williams, Lyon Mountain, N. Y.
Carl A. deGersdorff
Chas. H. Sabin
E. N. Potter
Matthew C. Brush
H. Hobart Porter
John J. Raskob
Finley J. Shepard
J. E. Davey
Geo. E. Warren, New York, N. Y.
L. Warrington Baldwin, St. Louis, Mo.
Frank Andrews
H. R. Safford, Houston, Texas
Alexander Berger, Maryton, Va.
C. B. Fox, New Orleans, La.

(Source: Poor's 1926—Railroad & Bank Section, p. 284)

[fol. 11] Comstock Exhibit 11.

International-Great Northern Railroad Company—1925

Officers:

William H. Williams, Chairman of the Board
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
A. R. Howard, Vice-President, Secretary & Treasurer, Palestine, Tex.
Earle Bailie, Vice-President, Asst. Secretary & Asst. Treasurer, New York
P. J. Neff, Asst. Executive Vice-President, Houston, Tex.
Carl A. de Gersdorff, General Counsel, New York
Frank Andrews, General Solicitor, Houston, Texas
W. J. Werner, Auditor, Palestine, Tex.
Horace Booth, General Traffic Manager
J. H. Lauderdale, Gen. Purchasing Agent, Houston, Tex.

Executive Committee:

William H. Williams, Chairman
Leon H. Kronthal
Earle Bailie
L. W. Baldwin

Directors:

William H. Williams
L. W. Baldwin
[Earlie] Bailie
Leon H. Kronthal
Harry Landa
Frank Andrews
J. L. Lancaster
H. R. Safford
A. R. Howard

(Source: Poor's 1926—Railroad & Bank Section, p. 293)

[fol. 12] Comstock Exhibit 12.

The St. Louis, Brownsville & Mexico Railway Company—1925

Officers:

L. W. Baldwin, Pres., St. Louis, Mo.;
H. R. Safford, Exec. Vice-Pres., Houston, Texas;
R. J. Kleberg, Vice-Pres., Kingsville, Texas;
A. T. Cole, Sec. & Treas.;
Frank Andrews, General Solicitor;
M. Eckert, Auditor;
W. G. Choate, General Manager;
C. S. Kirkpatrick, Chief Engineer, Houston, Texas;
J. E. Callahan, Division Superintendent, Kingsville, Texas;
J. H. Landerdale, Purchasing Agent, Houston, Texas.

Directors:

William H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.;
H. A. Safford
Frank Andrews
J. E. Anderson
W. G. Choate, Houston, Texas
R. J. Kleberg, Kingsville, Texas
A. B. Pierce, Blessing, Texas
C. M. Armstrong, Armstrong, Texas

(Source: Poor's 1926—Railroad & Bank Section, p. 286)

[fol. 13] Comstock Exhibit 13.

The Beaumont, Sour Lake & Western Railway Company—1925

Officers:

L. W. Baldwin, Pres., St. Louis, Mo.;
H. R. Safford, Executive Vice-Pres.;
J. S. Rice, Vice-Pres., Houston, Texas;
H. Lutter, Vice-Pres.;
J. E. Davey, Vice-Pres., New York;
A. T. Cole, Sec. & Treas.;
Andrews, Streetman, Logue & Mobley, Attys.;
E. M. Eckert, Auditor;
W. G. Choate, Gen. Manager;
C. S. Kirkpatrick, Chief Engineer;
J. H. Landerdale, Purchasing Agent, Houston, Texas;
G. C. Kennedy, Division Supt., DeQuincy, La.

Directors:

William H. Williams, Lyon Mountain, N. Y.;
L. W. Baldwin, St. Louis, Mo.;
H. R. Safford
Frank Andrews
W. G. Choate
J. E. Anderson
J. S. Rice
R. W. Wier, Houston, Texas;
B. R. Norvell, Beaumont, Texas.

(Source: Poor's 1926—Railroad & Bank Section—285)

[fol. 14] Comstock Exhibit 14-A.

Missouri Pacific Railroad Company—1926

Officers:

William H. Williams, Chairman of Board of Directors and Executive Committee, New York;
L. Baldwin, President;
J. Cannon, Vice-Pres. & Gen. Manager, St. Louis, Mo.;
Finley J. Shepard, Vice-President, New York;
J. G. Drew, Vice-President;
Edward J. White, Vice-President and General Solicitor;
C. E. Perkins, Vice-President in Charge of Traffic;
E. M. Durham, Jr., Vice-President;
F. P. Johnson, Vice-President in Charge of Finances and Accounts, St. Louis, Mo.;
H. R. Safford, Vice-President, Houston, Texas;
O. B. Huntsman, Vice-President, Asst. Secretary & Assistant Treasurer, New York;
W. G. Vollmer, Assistant to President, St. Louis, Mo.;
Paul D. Cravath, General Counsel
Carl A. de Gersdorff, Asst. General [Counse,] New York;
T. M. Niven, General Auditor, St. Louis, Mo.;
H. L. Utter, Sec. & Treasurer, New York;
F. W. Irland, Asst. Secretary;
F. M. Hickman, Local Treasurer;
W. A. Ramback, Freight Traffic Manager
A. D. Bell, Passenger Traffic Manager;
E. A. Hadley, Chief Engineer
W. A. Hopkins, [Geral] Purchasing Agent, St. Louis.

Executive Committee:

William H. Williams (Chairman)
Finley J. Shepard
Matthew C. Brush
Charles H. Sabin
L. W. Baldwin (Ex-Officio)
John J. Raskob
H. Hobart Porter

Directors:

William H. Williams, Chairman of Board
Finley J. Shepard
Matthew C. Brush
Arthur V. Davis
Charles H. Sabin
H. L. Utter
John J. Raskob
H. Hobart Porter
J. E. Davey, New York;
L. W. Baldwin
B. F. Bush
John G. Lonsdale
George W. Niedringhaus, St. Louis, Mo.
Charles E. Ingersoll, Philadelphia, Pa.
R. Lancaster Williams, Baltimore, Md.
William T. Kemper, Kansas City, Mo.
James W. Gardiner, Lake Charles, La.

(Source: Poor's 1927—Railroad & Bank Section, p. 940)

[fol. 15] Comstock Exhibit 14-B.

New Orleans, Texas & Mexico Railway Company—1926

Officers:

William H. Williams, Chairman of Board of Directors and of Executive Committee, Lyon Mountain, N. Y.;
L. Warrington Baldwin, President, St. Louis, Mo.;
H. R. Safford, Executive Vice-President, Houston, Texas;
E. M. Durham, Jr., Vice-President;
W. G. Vollmer, Asst. to President;
F. P. Johnson, Vice-President, St. Louis, Mo.;
J. E. Anderson, Asst. to Executive Vice-President, Houston;
Roy Terrell, Vice-President & Secretary, New Orleans, La.
J. E. Davey, Vice-President, Asst. Sec. & Asst. Treasurer;
H. L. Utter, Vice-President, Asst. Secretary & Asst. Treasurer, New York;

A. T. Cole, Treas. & Asst. Secretary, Houston, Texas;
G. E. Warren, Asst. Secretary & Asst. Treasurer, New York;
Frank Andrews, Gen. Solicitor, Houston, Texas;
Carl A. deGersdorff, General Counsel, New York, N. Y.;
M. Eckert, Auditor;
W. G. Choate, General Manager;
C. S. Kirkpatrick, Chief Engineer;
J. H. Lauderdale, Purchasing Agent;
H. Booth, General Traffic Manager;
C. W. Strain, Passenger Traffic Manager, Houston, Texas;
J. L. Kendall, Division Supt., DeQuincy, La.

Executive Committee:

William H. Williams (Chairman)
L. W. Baldwin
Matthew C. Brush
H. Hobart Porter
Finley J. Shepard
Charles H. Sabin

Directors:

William H. Williams, Lyon Mountain, N. Y.
Carl A. de Gersdorff
Chas. H. Sabin
E. N. Potter
Matthew C. Brush
H. Hobart Porter
John J. Raskob
Finley J. Shepard
J. E. Davey
Geo. E. Warren, New York, N. Y.
L. Warrington Baldwin, St. Louis, Mo.
Frank Andrews
H. R. Safford, Houston, Texas
Alexander Berger, Maryton, Va.
C. B. Fox, New Orleans, La.

(Source:- Poor's 1927—Railroad & Bank Section, p. 950)

[Vol. 16] Comstock Exhibit 14-C.

International-Great Northern Railroad Company—1926

Officers:

William H. Williams, Chairman of the Board
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
W. G. Vollmer, Asst. to President
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President, St. Louis, Mo.
A. R. Howard, Vice-President, Secretary & Treasurer, Palestine, Tex.
H. L. Utter, Vice-President, Asst. Secretary & Asst. Treasurer,
J. E. Davey, Vice-President, Asst. Secretary & Asst. Treasurer
Earle Bailie, Vice-President, New York
W. G. Choate, General Manager, Houston, Tex.
Carl A. de Geresdorff, General Counsel, New York
Frank Andrews, General Solicitor, Houston, Tex.
W. J. Werner, Auditor, Palestine, Tex.
Horace Booth, General Traffic Manager
J. H. Landerdale, Gen. Purchasing Agent
C. S. Kirkpatrick, Chief Engineer, Houston, Tex.

Executive Committee:

William H. Williams, Chairman
Leon H. Kronthal
Earle Bailie
L. W. Baldwin
J. L. Lancaster

Directors:

William H. Williams, Lyon Mountain, N. Y.
Earle Bailie
Leon H. Kronthal, New York
L. W. Baldwin, St. Louis
Harry Landa, New Braunsfels, Tex.
R. E. Harding, Fort Worth, Tex.
H. R. Safford, Houston, Tex.
A. R. Howard, Palestine, Tex.
J. L. Lancaster, Dallas, Tex.

(Source: Poor's 1927—Railroad & Bank Section, p. 959)

[fol. 17] Comstock Exhibit 14-D.

The St. Louis, Brownsville & Mexico Railway Company—1926

Officers:

L. W. Baldwin, President, St. Louis, Mo.;
H. R. Safford, Executive Vice-President, Houston, Texas;
R. J. Kleberg, Vice-President, Kingsville, Texas;
A. T. Cole, Secretary & Treasurer;
Frank Andrews, General Solicitor;
M. Eckert, Auditor;
W. G. Choate, General Manager;
C. S. Kirkpatrick, Chief Engineer, Houston, Texas;
G. C. Kennedy, Division Superintendent, Kingsville, Texas;
J. H. Lauderdale, Purchasing Agent, Houston, Texas.

Directors:

William H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
H. A. Safford
Frank Andrews
J. E. Anderson
W. G. Choate, Houston, Texas
R. J. Kleberg, Kingsville, Texas
A. B. Pierce, Blessing, Texas
C. M. Armstrong, Armstrong, Texas

(Source: Poor's 1927—Railroad & Bank Section, p. 953)

[fol. 18] Comstock Exhibit 14-E.

The Beaumont, Sour Lake & Western Railway Company—1926

Officers:

L. W. Baldwin, President, St. Louis, Mo.;
H. B. Safford, Executive Vice-President;
J. S. Rice, Vice-President, Houston, Texas;
A. T. Cole, Secretary & Treasurer;
Andrews, Streetman, Logue & Mobley, Attorneys;
M. Eckert, Auditor;
W. G. Choate, General Manager;
C. S. Kirkpatrick, Chief Engineer;
J. H. Lauderdale, Purchasing Agent, Houston, Texas;
J. L. Kendall, Division Supt., DeQuincy, La.

Directors:

William H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
H. B. Safford
Frank Andrews
W. G. Choate
J. E. Anderson
J. S. Rice
R. W. Wier, Houston, Texas
B. R. Norvell, Beaumont, Texas.

(Source: Poor's 1927—Railroad & Bank Section, p. 951)

[fol. 19] Comstock Exhibit 15-A.

Missouri Pacific Railroad Company—1927

Officers:

William H. Williams, Chairman of Board of Directors and Executive Committee, New York;
L. Baldwin, President;
E. M. Durham, Jr., Senior Vice-President;
J. Cannon, Vice-President and General Manager, St. Louis, Mo.;
Finley J. Shepard, Vice-President, New York;
J. G. Drew, Vice-President;
Edward J. White, Vice-President and General Solicitor;
C. E. Perkins, Vice-President in Charge of Traffic;
F. P. Johnson, Vice-President in Charge of Finances and Accounts, St. Louis, Mo.;
H. R. Safford, Vice-President, Houston, Texas;
O. B. Huntsman, Vice-President, Asst. Secretary & Asst. Treasurer, New York;
W. G. Vollmer, Assistant to President, St. Louis, Mo.;
Paul D. Cravath, General Counsel;
Carl A. de Geredorff, Asst. General Counsel, New York;
T. M. Niven, General Auditor, St. Louis, Mo.;
H. L. Utter, Secretary & Treasurer, New York;
F. W. Irland, Asst. Secretary;
W. J. Wright, Local Treasurer;
W. A. Ramback, Asst. to Vice-President—Traffic;
A. D. Bell, Passenger Traffic Manager;
E. A. Hadley, Chief Engineer;
W. A. Hopkins, General Purchasing Agent, St. Louis.

Executive Committee:

William H. Williams (Chairman)
Finley J. Shepard,
Matthew C. Brush
Charles H. Sabin
L. W. Baldwin (Ex-Officio)
John J. Raskob
H. Hobart Porter

Directors:

William H. Williams, Chairman of Board
Finley J. Shepard
Matthew C. Brush
Arthur V. Davis
Archibald R. Graustein
[Chares] H. Sabin
Herbert L. Utter
John J. Raskob
H. Hobart Porter
J. E. Davey, New York
L. W. Baldwin
John G. Lonsdale
E. M. Durham, Jr., St. Louis, Mo.
Charles E. Ingersoll, Philadelphia, Pa.
R. Lancaster Williams, Baltimore, Md.
William T. Kemper, Kansas City, Mo.
James W. Gardiner, Lake Charles, La.
A. D. Geoghegan, New Orleans, La.

(Source: Poor's—1928—Railroad Section—p. 463)

[fol. 20] Comstock Exhibit 15-B.

New Orleans, Texas & Mexico Railway Company—1927

Officers:

William H. Williams, Chairman of Board of Directors and of Executive Committee, Lyon Mountain, N. Y.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
E. M. Durham, Jr., Vice-President
W. G. Vollmer, Asst. to President
F. P. Johnson, Vice-President, St. Louis, Mo.
J. E. Anderson, Asst. to Executive Vice-President, Houston
J. E. Davey, Vice-President, Asst. Secretary & Asst. Treasurer
H. L. Utter, Secretary & Asst. Treasurer, New York
A. T. Cole, Treasurer & Asst. Secretary, Houston, Tex.

Ray M. McWilliams, Asst. Secretary, New Orleans, La.
G. E. Warren, Asst. Secretary & Asst. Treasurer, New York
Frank Andrews, General Solicitor, Houston, Texas
Carl A. de Gersdorff, General Counsel, New York, N. Y.
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
J. H. Lauderdale, Gen. Purchasing Agent
H. Booth, General Traffic Manager
C. H. Guion, Freight Traffic Manager
C. W. Strain, Pass. Traffic Manager, Houston, Tex.

Executive Committee:

William H. Williams (Chairman)
L. W. Baldwin
Matthew C. Brush
H. Hobart Porter
Finley J. Shepard
Charles H. Sabin

Directors:

William H. Williams, Lyon Mountain, N. Y.
Carl A. de Gersdorff
Charles H. Sabin
E. N. Potter
Matthew C. Brush
H. Hobart Porter
John J. Raskob
Finley J. Shepard
J. E. Davey
Geo. E. Warren, New York, N. Y.
L. W. Baldwin, St. Louis, Mo.
Frank Andrews
H. R. Safford, Houston, Tex.;
Alexander Berger, Maryton, Va.
C. B. Fox, New Orleans, La.

(Source: Poor's 1928—Railroad Section, p. 474)

[fol. 21] Comstock Exhibit 15-C.

International-Great Northern Railroad Company—1927

Officers:

William H. Williams, Chairman of the Board
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
W. G. Vollmer, Asst. to President
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President, St. Louis, Mo.
A. Naylor, Secretary & Treasurer, Palestine, Tex.
H. L. Utter, Vice-President, Asst. Secretary & Asst. Treasurer
J. E. Davey, Vice-President, Asst. Secretary & Asst. Treasurer
Earle Bailie, Vice-President
J. Benjamin Manley, Asst. Secretary, New York
A. T. Cole, Asst. Secretary & Asst. Treasurer
W. G. Choate, General Manager, Houston, Tex.
Carl A. de Gersdorff, General Counsel, N. Y.
Frank Andrews, General Solicitor, Houston, Tex.
W. J. Werner, Auditor, Palestine, Tex.
Horace Booth, General Traffic Manager
J. H. Lauderdale, General Purchasing Agent
C. S. Kirkpatrick, Chief Engineer, Houston, Tex.

Executive Committee:

William H. Williams, Chairman
Leon H. Kronthal
Earle Bailie
L. W. Baldwin
J. L. Lancaster

Directors:

William H. Williams, Lyon Mountain, N. Y.
Earle Bailie
Leon H. Kronthal, New York
L. W. Baldwin, St. Louis
Harry Landa, New Braunsfels, Tex.
R. E. Harding, Fort Worth, Tex.
H. R. Safford,
Frank Andrews, Houston, Tex.
J. L. Lancaster, Dallas, Tex.

(Source: Poor's 1928—Railroad Section, p. 483)

[fol. 23] Comstock Exhibit 14-D.

The St. Louis, Brownsville & Mexico Railway Company—1927

Officers:

L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
R. J. Kleberg, Vice-President, Kingsville, Texas
A. T. Cole, Secretary & Treasurer
Frank Andrews, General Solicitor, Houston, Texas
C. A. de Geresdorff, General Counsel, New York
M. Eckert, Auditor;
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer, Houston, Texas
G. C. Kennedy, Division Superintendent, Kingsville, Texas
J. H. Lauderdale, General Purchasing Agent, Houston, Texas.

Directors:

William H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
H. A. Safford
Frank Andrews
J. E. Anderson
W. G. Choate, Houston, Texas
R. J. Kleberg, Kingsville, Texas
A. B. Pierce, Blessing, Texas
C. M. Armstrong, Armstrong, Texas.

(Source: Poor's 1928—Railroad Section, p. 476)

[fol. 23] Comstock Exhibit 15-E.

The Beaumont, Sour Lake & Western Railway Company—1927

Officers:

L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President
J. S. Rice, Vice-President
A. T. Cole, Secretary & Treasurer
Andrews, Streetman, Logue & Mobley, Attorneys
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
J. H. Lauderdale, General Purchasing Agent, Houston, Texas
J. L. Kendall, Division Superintendent, DeQuincy, La.

Directors:

William H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
H. R. Safford
Frank Andrews
W. G. Choate
J. E. Anderson
J. S. Rice
R. W. Wier, Houston, Texas
B. R. Norvell, Beaumont, Texas.

(Source: Poor's 1928—Railroad Section, p. 475)

[fol. 24] Comstock Exhibit 16-A.

Missouri Pacific Railroad Company—1928

Officers:

William H. Williams, Chairman of Board of Directors and Executive Committee, New York
L. Baldwin, President
E. M. Durham, Jr., Senior Vice-President
J. Cannon, Vice-President & General Manager, St. Louis, Mo.
Finley J. Shepard, Vice-President, New York
J. G. Drew, Vice-President
Edward J. White, Vice-President and General Solicitor
C. E. Perkins, Vice-President in Charge of Traffic
F. P. Johnson, Vice-President in Charge of Finances & Accounts, St. Louis, Mo.
H. R. Safford, Vice-President, Houston, Texas
O. B. Huntsman, Vice-President, Asst. Secretary & Asst. Treasurer, New York
W. G. Vollmer, Asst. to President, St. Louis, Mo.
Paul D. Cravath, General Counsel
Carl A. de Gersdorff, Asst. General Counsel, New York
T. M. Niven, General Auditor, St. Louis, Mo.
H. L. Utter, Secretary & Treasurer, New York
F. W. Irland, Asst. Secretary
W. J. Wright, Local Treasurer
W. A. Rambach, Asst. to Vice-President—Traffic
A. D. Bell, Passenger Traffic Manager
E. A. Hadley, Chief Engineer
W. A. Hopkins, General Purchasing Agent, St. Louis.

Executive Committee:

William H. Williams (Chairman)
Finley J. Shepard
Matthew C. Brush
Charles H. Sabin
L. W. Baldwin (Ex-Officio)
Arthur V. Davis
H. Hobart Porter

Directors:

William H. Williams, Chairman of Board
Finley J. Shepard
Matthew C. Brush
Arthur V. Davis
Archibald R. Granstein
Charles H. Sabin
John J. Raskob
H. Hobart Porter
Wm. Wyer, New York
L. W. Baldwin
John G. Lonsdale
E. M. Durham, Jr., St. Louis, Mo.
Charles E. Ingersoll, Philadelphia, Pa.
R. Lancaster Williams, Baltimore, Md.
William T. Kemper, Kansas City, Mo.
W. P. Weber, Lake Charles, La.
A. D. Geoghegan, New Orleans, La.
John R. Flippen, Memphis, Tenn.

(Source: Poor's 1929—Railroad Section, p. 802)

[fol. 25] Comstock Exhibit 16-B.

New Orleans, Texas & Mexico Railway Company—1928

Officers:

William H. Williams, Chairman of Board of Directors and of Executive Committee, New York
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
E. M. Durham, Jr., Vice-President
W. G. Vollmer, Asst. to President
F. P. Johnson, Vice-President, St. Louis, Mo.
J. E. Anderson, Asst. to Executive Vice-President, Houston
William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer
H. L. Utter, Secretary & Asst. Treasurer
O. B. Huntsman, Asst. Secretary & Asst. Treasurer, New York
A. T. Cole, Treasurer & Asst. Secretary, Houston, Texas

Ray M. McWilliams, Asst. Secretary, New Orleans, La.
G. E. Warren, Asst. Secretary & Asst. Treasurer, New York
Frank Andrews, General [Solicitor,] Houston, Texas
Carl A. de Gersdorff, General Counsel, New York, N. Y.
M. Eckert, Auditor
W. G. Choate, General Manager
S. C. Kirkpatrick, Chief Engineer
J. H. Lauderdale, General Purchasing Agent
H. Booth, General Traffic Manager
C. H. Guion, Freight Traffic Manager
C. W. Strain, Passenger Traffic Manager, Houston, Texas

Executive Committee:
William H. Williams (Chairman)
L. W. Baldwin
Matthew C. Brush
H. Hobart Porter
Finley J. Shepard
[Chares] H. Sabin
Arthur V. Davis

Directors:
William H. Williams, Lyon Mountain, N. Y.
Carl A. de Gersdorff
Chas. H. Sabin
E. N. Potter
Matthew C. Brush
H. Hobart Porter
Arthur V. Davis
Finley J. Shepard
William Wyer
Geo. E. Warren, New York, N. Y.
L. W. Baldwin, St. Louis, Mo.
Frank Andrews
H. R. Safford, Houston, Texas
Alexander Berger, Maryton, Va.
C. B. Fox, New Orleans, La.

(Source: Poor's 1929—Railroad Section, pp. 816-817)

[fol. 26] Comstock Exhibit 16-C.

Alleghany Corporation—1928

Officers:

O. P. Van Sweringen, President
M. J. Van Sweringen, Vice-President
C. L. Bradley, Vice-President
D. S. Barrett, Jr., Treasurer
John P. Murphy, Secretary

Directors:

O. P. Van Sweringen
M. J. Van Sweringen
J. R. Nutt
C. L. Bradley
D. S. Barrett, Jr., Cleveland, Ohio.

(Source: Poor's 1929—Railroad Section, p. 417)

[fol. 27] Comstock Exhibit 16-D.

International-Great Northern Railroad Company—1928

Officers:

William H. Williams, Chairman of Board & Executive Committee
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
W. G. Vollmer, Asst. to President
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President, St. Louis, Mo.
A. Naylor, Secretary & Treasurer, Palestine, Texas
H. L. Utter, Vice-President, Asst. Secretary & Asst. Treasurer
William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer
Earle Bailie, Vice-President

O. B. Huntsman, Asst. Secretary & Asst. Treasurer, New York
A. T. Cole, Asst. Secretary & Asst. Treasurer
W. G. Choate, General Manager, Houston, Texas
Carl A. de Gersdorff, General Counsel, New York
Frank Andrews, General Solicitor, Houston, Texas
Andrews, Streetman, Logue & Mobley, General Attorneys
Samuel B. Dabney, General Attorney
W. J. Werner, Auditor, Palestine, Texas
Horace Booth, General Traffic Manager
J. H. Lauderdale, General Purchasing Agent
C. S. Kirkpatrick, Chief Engineer, Houston, Texas

Executive Committee:

William H. Williams, Chairman
Rudolph R. Loening
Earle Bailie
L. W. Baldwin
J. L. Lancaster

Directors:

William H. Williams, Lyon Mountain, N. Y.
Earle Bailie
Rudolph R. Loening, New York
L. W. Baldwin, St. Louis
Harry Landa, New Braunsfels, Tex.
R. E. Harding, Fort Worth, Texas
H. R. Safford, Frank Andrews, Houston, Tex.
J. L. Lancaster, Dallas, Texas

(Source: Poor's 1929—Railroad Section, p. 827)

[fol. 28] Comstock Exhibit 16-E.

St. Louis, Brownsville & Mexico Railway Company—1928

Officers:

William H. Williams, Chairman of Board & Executive Committee, New York
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
F. P. Johnson, Vice-President
E. M. Durham, Jr., Vice-President, St. Louis, Mo.
R. J. Kleberg, Vice-President, Kingsville, Texas
H. L. Utter, Vice-President, Asst. Secretary & Asst. Treasurer
William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer, New York
A. T. Cole, Secretary & Treasurer
Frank Andrews, General Solicitor, Houston, Texas
C. A. de Gersdorff, General Counsel, New York
E. H. Crenshaw, Jr., General Attorney, Kingsville, Texas
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer, Houston, Texas
G. C. Kennedy, Division Superintendent, Kingsville, Texas
J. H. Lauderdale, Gen. Purchasing Agent, Houston, Texas

Directors:

William H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
H. R. Safford
Frank Andrews
J. E. Anderson
W. G. Choate, Houston, Texas
R. J. Kleberg, Kingsville, Texas
A. B. Pierce, Blessing, Texas
C. M. Armstrong, Armstrong, Texas

(Source: Poor's 1929—Railroad Section, p. 819)

[fol. 29] Comstock Exhibit 16-F.

The Beaumont, Sour Lake & Western Railway Company—1928

Officers:

William H. Williams, Chairman of Board and Executive Committee, New York
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President, St. Louis, Mo.
J. S. Rice, Vice-President, Houston, Texas
H. L. Utter, Vice-President, Asst. Secretary & Asst. Treasurer
William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer, New York
A. T. Cole, Secretary & Treasurer, Houston, Texas
C. A. de Gersdorff, General Counsel, New York
Frank Andrews, General Solicitor
Andrews, Streetman, Logue & Mobley, Attorneys
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
J. H. Lauderdale, General Purchasing Agent, Houston, Texas
J. L. Kendall, Division Superintendent, DeQuincy, La.

Directors:

William H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
H. R. Safford
Frank Andrews
W. G. Choate
J. E. Anderson
J. S. Rice
R. W. Wier
M. Eckert, Houston, Texas.

(Source: Poor's 1929—Railroad Section, p. 817)

[fol. 30] Comstock Exhibit 17-A.

Missouri Pacific Railroad Company—1929

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee
L. W. Baldwin, President
E. M. Durham, Jr., Senior Vice-President
J. Cannon, Vice-President & General Manager
J. G. Drew, Vice-President
Edward J. White, Vice-President & General Solicitor
C. E. Perkins, Vice-President in Charge of Traffic
F. P. Johnson, Vice-President
H. R. Safford, Vice-President
William Wyer, Secretary & Treasurer
O. B. Huntsman, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer
F. W. Irland, Asst. Secretary
W. J. Wright, Local Treasurer

Executive Committee:

O. P. Van Sweringen
Leonard P. Ayres
L. W. Baldwin
D. S. Barrett, Jr.
Alva Bradley
John Sherwin, Jr.
G. A. Tomlinson

Directors:

O. P. Van Sweringen
Leonard P. Ayres
L. W. Baldwin
D. S. Barrett, Jr.
Alva Bradley
H. G. Dalton
Arthur [Va.] Davis
John R. Flippin
A. D. Geoghegan
Fred G. Hilvert
W. T. Kemper
John G. Lonsdale

W. W. Reilley
Charles H. Sabin
John Sherwin, Jr.
G. A. Tomlinson
W. P. Weber

(Source: Poor's 1930—Railroad & Bank Section, p. 780)

[fol. 31] Comstock Exhibit 17-B.

New Orleans, Texas & Mexico Railway Company—1929

Officers:

O. P. Van Sweringen, Chairman of Board
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
E. M. Durham, Jr., Vice-President
W. G. Vollmer, Asst. to President
F. P. Johnson, Vice-President, St. Louis, Mo.
J. E. Anderson, Asst. to Executive Vice-President, Houston
William Wyer, Vice-President; Secretary & Asst. Treasurer
O. B. Huntsman, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer, New York
A. T. Cole, Treasurer & Asst. Secretary, Houston, Texas
R. M. McWilliams, Asst. Secretary, New Orleans, La.
G. E. Warren, Asst. Secretary & Asst. Treasurer, New York
Frank Andrews, General Solicitor, Houston, Texas
Carl A. de Gersdorff, General Counsel, New York, N. Y.
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
J. H. Lauderdale, General Purchasing Agent
H. Booth, General Traffic Manager
C. H. Guion, Freight Traffic Manager
C. W. Strain, Passenger Traffic Manager, Houston, Texas.

Executive Committee:

William H. Williams (Chairman)
L. W. Baldwin
Matthew C. Brush
H. Hobart Porter
Finley J. Shepard
Charles H. Sabin
Arthur V. Davis

Directors:

O. P. Van Sweringen
Alva Bradley
Leonard P. Ayres
D. S. Barrett, Jr.
John Sherwin, Jr.
H. G. Dalton
G. A. Tomlinson
A. D. Geoghegan
John R. Flippin
W. W. Reilley

(Source: Poor's 1930—Railroad & Bank Section, p. 794)

[fol. 32] Comstock Exhibit 17-C.

International-Great Northern Railroad Company—1929

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
W. G. Vollmer, Asst. to President
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President, St. Louis, Mo.
A. Naylor, Secretary & Treasurer, Palestine, Texas
O. B. Huntsman, Vice-President, Asst. Secretary & Asst. Treasurer

William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer, New York
A. T. Cole, Asst. Secretary & Asst. Treasurer
W. G. Choate, General Manager, Houston, Texas
Carl A. de Gersdorff, General Counsel, N. Y.
Frank Andrews, General Solicitor, Houston, Texas
Andrews, Streetman, Logue & Mobley, General Attorneys
Samuel B. Dabney, General Attorney
W. J. Werner, Auditor, Palestine, Texas
Horace Booth, General Traffic Manager
J. H. Lauderdale, General Purchasing Agent
C. S. Kirkpatrick, Chief Engineer, Houston, Tex.

Executive Committee:

O. P. Van Sweringen, Chairman
Rudolph R. Loening
A. I. Henderson
L. W. Baldwin
J. L. Lancaster

Directors:

O. P. Van Sweringen
A. I. Henderson
Rudolph R. Loening, New York
L. W. Baldwin, St. Louis
Harry Landa, San Antonio, Texas
R. E. Harding, Fort Worth, Tex.
H. R. Safford
Frank Andrews, Houston, Tex.
J. L. Lancaster, Dallas, Tex.

(Source: Poor's 1930—Railroad & Bank Section, p. 804)

[fol. 33] Comstock Exhibit 17-D.

The St. Louis, Brownsville & Mexico Railway Company—1929

Officers:

William H. Williams, Chairman of Board & Executive Committee, New York
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
F. P. Johnson, Vice-President
E. M. Durham, Jr., Vice-President, St. Louis, Mo.
R. J. Kleberg, Vice-President, Kingsville, Texas
William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer, New York
A. T. Cole, Secretary & Treasurer
Frank Andrews, General Solicitor, Houston, Texas
C. A. de Gersdorff, General Counsel, New York
E. H. Crenshaw, Jr., General Attorney, Kingsville, Texas
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer, Houston, Texas
G. C. Kennedy, Division Superintendent, Kingsville, Texas
J. H. Lauderdale, Gen. Purchasing Agent, Houston, Texas

Directors:

William H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
H. R. Safford
Frank Andrews
J. E. Anderson
W. G. Choate, Houston, Texas
R. J. Kleberg, Kingsville, Texas
A. B. Pierce, Blessing, Texas
C. M. Armstrong, Armstrong, Texas.

(Source: Poor's 1930—Railroad & Bank Division, p. 797)

[fol. 34] Comstock Exhibit 17-E.

The Beaumont, Sour Lake & Western Railway Company—1929

Officers:

William H. Williams, Chairman of Board & Executive Committee, New York
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President, St. Louis, Mo.
J. S. Rice, Vice-President, Houston, Texas
William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer, New York
A. T. Cole, Secretary & Treasurer, Houston, Texas
C. A. de Gersdorff, General Counsel, New York
Frank Andrews, Gen. Solicitor
Andrews, Streetman, Logue & Mobley, General Attorneys
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
J. H. Lauderdale, Gen. Purchasing Agent, Houston, Texas
L. A. Gregory, Division [Superintendant,] DeQuincy, La.

Directors:

William H. Williams, Lyon Mountain, N. Y.
L. W. Baldwin, St. Louis, Mo.
H. R. Safford
Frank Andrews
W. G. Choate
J. E. Anderson
J. S. Rice
R. W. Wier
M. Eckert, Houston, Texas

(Source: Poor's 1930—Railroad & Bank Section, p. 795)

[fol. 35] Comstock Exhibit 18-A.

Missouri Pacific Railroad Company—1930

Officers:

O. P. Van Sweringen, Chairman of Board and Executive Committee
L. W. Baldwin, President
E. M. Durham, Jr., Senior Vice-President
J. Cannon, Vice-President & General Manager
Herbert Fitzpatrick, Vice-President, Law & Corporate Relations
Edward J. White, Vice-President & General Solicitor
C. E. Perkins, Vice-President in Charge of Traffic
F. P. Johnson, Vice-President
H. R. Safford, Vice-President
William Wyer, Secretary & Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer
F. W. Irland, Asst. Secretary
W. J. Wright, Local Treasurer

Executive Committee:

O. P. Van Sweringen
Leonard P. Ayres
L. W. Baldwin
D. S. Barrett, Jr.
Alva Bradley
John Sherwin, Jr.
G. A. Tomlinson

Directors:

O. P. Van Sweringen
Leonard P. Ayres
D. S. Barrett, Jr.
Alva Bradley
H. G. Dalton
John Sherwin, Jr.
G. A. Tomlinson, Cleveland, Ohio
L. W. Baldwin
John G. Lonsdale, St. Louis, Mo.
Arthur V. Davis
Charles H. Sabin, New York, N. Y.

John R. Flippin, Memphis, Tenn.
A. D. Geoghegan, New Orleans, La.
Fred G. Hilvert, Phoenix, Arizona
William T. Kemper, Kansas City, Mo.
W. W. Reilly, Buffalo, N. Y.
W. P. Weber, Lake Charles, La.

(Source: Poor's 1931—Railroad Volume, p. 1049)

[fol. 36] Comstock Exhibit 18-B.

New Orleans, Texas & Mexico Railway Company—1930

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee, Cleveland, Ohio
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
Herbert Fitzpatrick, Vice President, Law & Corp. Relations, Cleveland, Ohio
E. M. Durham, Jr., Vice-President
W. G. Vollmer, Asst. to President
F. P. Johnson, Vice-President, St. Louis, Mo.
J. E. Anderson, Asst. to Executive Vice President, Houston
William Wyer, Secretary & Asst. Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer, Cleveland
A. T. Cole, Treasurer & Asst. Secretary, Houston, Texas
R. M. McWilliams, Asst. Secretary, New Orleans, La.
Frank Andrews, Gen. Solicitor, Houston, Texas
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
J. H. Lauderdale, Gen. Purchasing Agent
H. Booth, General Traffic Manager
C. H. Guion, Freight Traffic Manager
C. W. Strain, Passenger Traffic Manager, Houston, Texas

Executive Committee:

O. P. Van Sweringen (Chairman)
L. W. Baldwin
Leonard P. Ayres
Darwin S. Barrett, Jr.
Alva Bradley
George A. Tomlinson
John Sherwin, Jr.

Directors:

O. P. Van Sweringen
Leonard P. Ayres
Darwin S. Barrett, Jr.
Alva Bradley
Henry G. Dalton
John Sherwin, Jr.
George A. Tomlinson, Cleveland, Ohio
L. W. Baldwin, St. Louis, Mo.
Arthur V. Davis
Charles H. Sabin, New York, N. Y.
C. B. Fox
A. D. Geoghegan, New Orleans, La.
John R. Flippin, Memphis, Tenn.
Wm. W. Reilley, Buffalo, N. Y.
H. R. Safford, Houston, Tex.

(Source: Poor's 1931—Railroad Volume, p. 1065)

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fol. 37] Comstock Exhibit 18-C.

International-Great Northern Railroad Company—1930

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee, Cleveland, Ohio
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
W. G. Vollmer, Asst. to President

Herbert Fitzpatrick, Vice-President Law & Corporate Relations, Cleveland, Ohio
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President, St. Louis, Mo.
A. Naylor, Secretary & Treasurer, Palestine, Texas
William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer
C. W. Veitch, Edwin G. Wagner, Asst. Sec's & Asst. Treas's., Cleveland, Ohio
A. T. Cole, Asst. Secretary & Asst. Treasurer
W. G. Choate, General Manager, Houston, Texas
Frank Andrews, General Solicitor, Houston, Texas
Andrews, Streetman, Logue & Mobley, General Attorney
W. J. Werner, Auditor, Palestine, Tex.
Horace Booth, General Traffic Manager
J. H. Lauderdale, Gen. Purchasing Agent
C. S. Kirkpatrick, Chief Engineer, Houston, Tex.

Executive Committee:

O. P. Van Sweringen, Chairman
Rudolph R. Loening
A. I. Henderson
L. W. Baldwin
J. L. Lancaster

Directors:

O. P. Van Sweringen, Cleveland, Ohio
A. I. Henderson,
Rudolph R. Loening, New York
L. W. Baldwin, St. Louis
Harry Landa, San Antonio, Texas
R. E. Harding, Fort Worth, Tex.
H. R. Safford,
Frank Andrews, Houston, Tex.
J. L. Lancaster, Dallas, Tex.

(Source: Poor's 1931—Railroad Volume, p. 1081)

[fol. 38] Comstock Exhibit 18-D.

The St. Louis, Brownsville and Mexico Railway Company—1930

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee, Cleveland, Ohio
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
F. P. Johnson, Vice-President
E. M. Durham, Jr., Vice-President, St. Louis, Mo.
R. J. Kleberg, Vice-President, Kingsville, Texas
Herbert Fitzpatrick, Vice-President—Law & Corporate Relations
William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer, Cleveland, Ohio
A. T. Cole, Secretary & Treasurer
Frank Andrews, General Solicitor, Houston, Texas
E. H. Crenshaw, Jr., General Attorney, Kingsville, Texas
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer, Houston, Tex.
G. C. Kennedy, Division Superintendent, Kingsville, Tex.
J. H. Lauderdale, Gen. Purchasing Agent, Houston, Tex.

Directors:

O. P. Van Sweringen, Cleveland, Ohio
L. W. Baldwin, St. Louis, Mo.
H. R. Safford
Frank Andrews
J. E. Anderson
W. G. Choate, Houston, Tex.
R. J. Kleberg, Kingsville, Tex.
A. B. Pierce, Blessing, Tex.
C. M. Armstrong, Armstrong, Tex.

(Source: Poor's 1931—Railroad Volume, p. 1066)

[fol. 39] Comstock Exhibit 18-E.

The Beaumont, Sour Lake & Western Railway Company—1930

Officers:

O. P. Van Sweringen, Chairman of Board and Executive Committee, Cleveland, Ohio
L. W. Baldwin, President, St. Louis, Mo.
H. R. Sanford, Executive Vice-President, Houston, Texas
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President, St. Louis, Mo.
Herbert Fitzpatrick, Vice-President Law & Corporate Relations
Wm. Wyer, Vice-President, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer, Cleveland, Ohio
A. T. Cole, Secretary & Treasurer, Houston, Texas
Frank Andrews, General Solicitor
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
J. H. Lauderdale, Gen. Purchasing Agent, Houston, Tex.
L. A. Gregory, Division Supt., DeQuincy, La.

Directors:

O. P. Van Sweringen, Cleveland, Ohio
L. W. Baldwin, St. Louis, Mo.
H. R. Safford
Frank Andrews
W. G. Choate
J. E. Anderson
J. S. Rice
R. W. Wier
M. Eckert, Houston, Tex.

(Source: Poor's 1931—Railroad Volume, p. 1067)

[fol. 40] Comstock Exhibit 19-A.

Missouri Pacific Railroad Company—1931

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee
L. W. Baldwin, President
E. M. Durham, Jr., Senior Vice-President
J. Cannon, Vice-President & General Manager
Herbert Fitzpatrick, Vice-President, Law & Corporate Relations
Edward J. White, Vice-President & Gen. Solicitor
C. E. Perkins, Vice-President in Charge of Traffic
F. P. Johnson, Vice-President
H. R. Safford, Vice-President
Wm. Wyer, Secretary & Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer
A. T. Cole, Asst. Secretary
W. J. Wright, Local Treasurer

Executive Committee:

O. P. Van Sweringen
Leonard P. Ayres
L. W. Baldwin
D. S. Barrett, Jr.
Alva Bradley
John Sherwin, Jr.
G. A. Tomlinson

Directors:

O. P. Van Sweringen
Leonard P. Ayres
D. S. Barrett, Jr.
Alva Bradley
H. G. Dalton
John Sherwin, Jr.
G. A. Tomlinson, Cleveland, Ohio
L. W. Baldwin
John G. Lonsdale, St. Louis, Mo.
John R. Flippin, Memphis, Tenn.
A. D. Geoghegan, New Orleans, La.

Fred G. Hilvert, Phoenix, Ariz.
William T. Kemper, Kansas City, Mo.
W. W. Reilly, Buffalo, N. Y.
W. P. Weber, Lake Charles, La.
Finley J. Shepard.

(Source: Poor's 1932—Railroad Volume, p. 633)

[fol. 41] Comstock Exhibit 19-B.

New Orleans, Texas & Mexico Railway Company—1931

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee, Cleveland, Ohio
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas
Herbert Fitzpatrick, Vice-President Law & Corporate Relations, Cleveland, Ohio
E. M. Durham, Jr., Vice-President
W. G. Vollmer, Asst. to President
F. P. Johnson, Vice-President
C. E. Perkins, Vice-President, Traffic, St. Louis, Mo.
J. E. Anderson, Asst. to Executive Vice-President, Houston
William Wyer, Secretary & Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer, Cleveland
A. Naylor, Asst. Secretary & Asst. Treasurer, Palestine, Tex.
A. T. Cole, Asst. Secretary, St. Louis, Mo.
R. M. McWilliams, Asst. Secretary, New Orleans, La.
Frank Andrews, General Solicitor, Houston, Texas
M. Eckert, Auditor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
J. H. Lauderdale, General Purchasing Agent
H. Booth, General Traffic Manager
C. H. Guion, Freight Traffic Manager

Directors:

O. P. Van Sweringen
Leonard P. Ayres
Darwin S. Barrett, Jr.
Alva Bradley
Henry G. Dalton
John Sherwin, Jr.
George A. Tomlinson, Cleveland, Ohio
L. W. Baldwin
John G. Lonsdale, St. Louis, Mo.
Finley J. Shepard, New York, N. Y.
C. B. Fox
A. D. Geoghegan, New Orleans, La.
John R. Flippin, Memphis, Tenn.
Wm. W. Reilley, Buffalo, N. Y.
H. R. Safford, Houston, Tex.

Executive Committee:

O. P. Van Sweringen (Chairman)
L. W. Baldwin
Leonard P. Ayres
Darwin S. Barrett, Jr.
Alva Bradley
George A. Tomlinson
John Sherwin, Jr.

(Source: Poor's 1932—Railroad Volume, p. 650)

[fol. 42] Comstock Exhibit 19-C.

International-Great Northern Railroad Company—1931

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee, Cleveland, Ohio
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Texas

W. G. Vollmer, Asst. to President, St. Louis, Mo.
Herbert Fitzpatrick, Vice-President Law & Corporate Relations, Cleveland, Ohio
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President
C. E. Perkins, Vice-President in Charge of Traffic, St. Louis, Mo.
A. Naylor, Secretary & Treasurer, Palestine, Texas
William Wyer, C. W. Veitch, Edwin G. Wagner, Asst. Secretaries & Asst. Treasurers, Cleveland, Ohio
A. T. Cole, Asst. Secretary & Asst. Treasurer, St. Louis, Mo.
W. G. Choate, General Manager
Frank Andrews, General Solicitor
Andrews, Streetman, Logue & Mobley, General Attorneys, Houston, Texas
W. J. Werner, Auditor, Palestine, Texas
Horace Booth, General Traffic Manager
J. H. Lauderdale, General Purchasing Agent
C. S. Kirkpatrick, Chief Engineer, Houston, Tex.

Executive Committee:

O. P. Van Sweringen, Chairman
Rudolph R. Loening
John C. Jay
L. W. Baldwin
J. L. Lancaster

Directors:

O. P. Van Sweringen, Cleveland, Ohio
John C. Jay
Rudolph R. Loening, New York
L. W. Baldwin, St. Louis
Harry Landa, San Antonio, Texas
R. E. Harding, Fort Worth, Texas
H. R. Safford, Frank Andrews, Houston, Tex.
J. L. Lancaster, Dallas, Texas.

(Source: Poor's 1932—Railroad Volume, p. 666)

[fol. 43] Comstock Exhibit 19-D.

The St. Louis, Brownsville & Mexico Railway Company—1931

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee, Cleveland, Ohio
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
F. P. Johnson, Vice-President
E. M. Durham, Jr., Vice-President
C. E. Perkins, Vice-President (Traffic), St. Louis, Mo.
R. J. Kleberg, Vice-President, Kingsville, Tex.
Herbert Fitzpatrick, Vice-President—Law & Corporate Relations
William Wyer, Vice-President, Asst. Secretary & Asst. Treasurer, Cleveland
A. Naylor, Secretary & Treasurer, Palestine, Tex.
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer, Cleveland, Ohio
A. T. Cole, Asst. Secretary, St. Louis, Mo.
Frank Andrews, General Solicitor, Houston, Tex.
E. H. Crenshaw, Jr., General Attorney, Kingsville, Tex.
M. Eckert, Auditor

Directors:

O. P. Van Sweringen, Cleveland, Ohio
L. W. Baldwin, St. Louis, Mo.
H. R. Safford
Frank Andrews
J. E. Anderson
W. G. Choate, Houston, Tex.
R. J. Kleberg, Kingsville, Tex.
A. B. Pierce, Blessing, Tex.
C. M. Armstrong, Armstrong, Tex.

(Source: Poor's 1932—Railroad Volume, p. 651)

[fol. 44] Comstock Exhibit 19-E.

The Beaumont, Sour Lake & Western Railway Company—1931

Officers:

O. P. Van Sweringen, Chairman of Board & Executive Committee, Cleveland, Ohio
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
E. M. Durham, Jr., Vice-President
F. P. Johnson, Vice-President
C. E. Perkins, Vice-President (Traffic), St. Louis, Mo.
Herbert Fitzpatrick, Vice-President, Law & Corporate Relations
Wm. Wyer, Vice-President, Asst. Secretary & Asst. Treasurer
Edwin G. Wagner, Asst. Secretary & Asst. Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer, Cleveland, Ohio
A. Naylor, Secretary & Treasurer, Palestine, Tex.
A. T. Cole, Asst. Secretary, St. Louis, Mo.
Frank Andrews, General Solicitor
M. Eckert, Auditor, Houston, Tex.

Directors:

O. P. Van Sweringen
D. S. Barrett, Jr., Cleveland, Ohio
L. W. Baldwin, St. Louis, Mo.
H. R. Safford
Frank Andrews
W. G. Choate
J. E. Anderson
R. W. Wier
M. Eckert, Houston, Tex.

(Source: Poor's 1932—Railroad Volume, p. 652)

[fol. 45] Comstock Exhibit 20-A.

Missouri Pacific Railroad Company—1932

Officers:

O. P. Van Sweringen, Chairman
L. W. Baldwin, President
E. M. Durham, Jr., Senior Vice-President
H. R. Safford, F. P. Johnson, Vice-President
E. J. White, Vice-President & General Solicitor
J. Cannon, Vice-President & General Manager
C. E. Perkins, Vice-President in Charge of Traffic
Herbert Fitzpatrick, Vice-President
Wm. Wyer, Secretary & Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer
E. G. Wagner, Asst. Secretary & Asst. Treasurer
A. T. Cole, Asst. Secretary
W. J. Wright, Local Treasurer
T. M. Niven, General Auditor.

Directors:

L. W. Baldwin, St. Louis
F. J. Shepard, New York
W. T. Kemper, Kansas City
W. P. Weber, Lake Charles, La.
A. D. Geoghegan, New Orleans, La.
J. R. Flippin, Memphis, Tenn.
Fred G. Hilvert, Phoenix, Ariz.
O. P. Van Sweringen,
John Sherwin, Jr.,
D. S. Barrett, Jr.,
L. P. Ayres,
H. G. Dalton,
G. A. Tomlinson,
Alva Bradley, Cleveland, O.
W. W. Reilley, Buffalo, N. Y.

(Source: Moody's 1933—Railroads, p. 896)

[fol. 46] Comstock Exhibit 20-B.

New Orleans, Texas & Mexico Railway Company—1932

Officers:

O. P. Van Sweringen, Chairman, Cleveland, O.
L. W. Baldwin, President & Trustee, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
E. M. Durham, Jr., Vice-President
W. G. Vollmer, Asst. to President
F. P. Johnson, C. E. Perkins, Vice-Pres., St. Louis, Mo.
Herbert Fitzpatrick, Vice-President
Wm. Wyer, Secretary & Treasurer
C. W. Veitch, E. G. Wagner, Asst. Secretary & Asst. Treasurer, Cleveland, O.
J. E. Anderson, Asst. to Executive Vice-President, Houston, Tex.
R. M. McWilliams, Asst. Secretary, New Orleans, La.
A. T. Cole, Asst. Secretary, St. Louis, Mo.
W. G. Choate, General Manager
Frank Andrews, General Solicitor, Houston, Tex.
A. Naylor, Asst. Secretary & Asst. Treasurer, Palestine, Tex.
M. Eckert, Auditor
J. H. Lauderdale, Purchasing Agent, Houston, Tex.

Directors:

O. P. Van Sweringen
L. P. Ayres
D. S. Barrett, Jr.
Alva Bradley
H. G. Dalton
John Sherwin, Jr.
G. A. Tomlinson, Cleveland, O.
L. W. Baldwin, St. Louis, Mo.
Finley J. Shepard, N. Y.
J. R. Flippin, Memphis, Tenn.
C. B. Fox
A. D. Geoghegan, New Orleans, La.
W. W. Reilley, Buffalo, N. Y.
H. R. Safford, Houston, Tex.

(Source: Moody's 1933—Railroads, p. 918)

[fol. 47] Comstock Exhibit 20-C.

International-Great Northern Railroad Company—1932

Officers:

O. P. Van Sweringen, Chairman, Cleveland, O.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
F. P. Johnson, E. M. Durham, Jr., Vice-President, St. Louis, Mo.
Herbert Fitzpatrick, Vice-President, Cleveland, O.
W. G. Vollmer, Asst. to President, St. Louis, Mo.
A. Naylor, Treasurer & Secretary, Palestine, Tex.
C. W. Veitch, Wm. Wyer, E. G. Wagner, Asst. Secretary & Asst. Treasurer, Cleveland, O.
A. T. Cole, Asst. Secretary, St. Louis, Mo.
W. J. Werner, Auditor, Palestine, Tex.
J. H. Lauderdale, Purchasing Agent
W. G. Choate, General Manager
Frank Andrews, General Solicitor, Houston, Tex.

Directors:

O. P. Van Sweringen, Cleveland, O.
L. W. Baldwin, St. Louis, Mo.
J. C. Jay, R. R. Loening, N. Y.
H. R. Safford, Frank Andrews, Houston, Tex.
Harry Landa, San Antonio, Tex.
R. E. Harding, Fort Worth, Tex.
J. L. Lancaster, Dallas, Tex.

(Source: Moody's 1933—Railroads, p. 932)

[fol. 48] Comstock Exhibit 20-D.

The St. Louis, Brownsville & Mexico Railway Company—1932

Officers:

O. P. Van Sweringen, Chairman, Cleveland, O.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
E. M. Durham, Jr., F. P. Johnson, C. E. Perkins, Vice-President, St. Louis, Mo.
Herbert Fitzpatrick, Vice-President
Wm. Wyer, Vice-President, Asst. Secretary & Asst. Treasurer, Cleveland, O.
A. Naylor, Secretary & Treasurer, Palestine, Tex.
A. T. Cole, Asst. Secretary, St. Louis, Mo.
E. G. Wagner, C. W. Veitch, Asst. Secretary & Asst. Treasurer, Cleveland, O.
M. Eckert, Auditor
Frank Andrews, General Solicitor, Houston, Tex.
E. H. Crenshaw, Jr., General Attorney, Kingsville, Tex.
W. G. Choate, General Manager, Houston, Tex.
J. L. Lauderdale, Purchasing Agent, Houston, Tex.

Directors:

O. P. Van Sweringen, Cleveland, O.
L. W. Baldwin, St. Louis, Mo.
Frank Andrews
W. G. Choate
H. R. Safford
J. E. Anderson, Houston, Tex.
R. J. Kleberg, Jr., Kingsville, Tex.
C. M. Armstrong, Armstrong, Tex.
A. B. Pierce, Blessing, Tex.

(Source: Moody's 1933—Railroads, p. 941)

[fol. 49] Comstock Exhibit 20-E.

The Beaumont, Sour Lake & Western Railway Company—1932

Officers:

O. P. Van Sweringen, Chairman, Cleveland, O.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
Wm. Wyer, Vice-President, Asst. Secretary & Asst. Treasurer, Cleveland, O.
F. P. Johnson, E. M. Durham, Jr., C. E. Perkins, Vice-President, St. Louis, Mo.
Herbert Fitzpatrick, Vice-President, Cleveland, O.
A. Naylor, Secretary & Treasurer, Palestine, Tex.
A. T. Cole, Secretary, St. Louis, Mo.
E. G. Wagner, C. W. Veitch, Asst. Secretary & Asst. Treasurer, Cleveland, O.
M. Eckert, Auditor
Frank Andrews, General Solicitor
W. G. Choate, General Manager, Houston, Tex.

Directors:

O. P. Van Sweringen
D. S. Barrett, Jr., Cleveland, O.
L. W. Baldwin, St. Louis, Mo.
R. W. Wier
H. R. Safford
Frank Andrews
W. G. Choate
J. E. Anderson
M. Eckert, Houston, Tex.

(Source: Moody's 1933—Railroads, p. 929)

[fol. 50] Comstock Exhibit 21-A.

Missouri Pacific Railroad Company—1933

Officers of Trustees:

E. M. Durham, Jr., Senior Executive Assistant, St. Louis
H. R. Safford, Executive Assistant, Houston
E. J. White, Counsel for Trustees
W. G. Vollmer, Executive Assistant
F. P. Johnson, Chief Accounting & Financial Officer
J. Cannon, Chief Operating Officer
C. E. Perkins, Chief Traffic Officer
A. T. Cole, Secretary
W. J. Wright, Treasurer
T. M. Niven, General Auditor
J. H. Lauderdale, General Purchasing Agent, St. Louis

Management Officers:

O. P. Van Sweringen, Chairman
L. W. Baldwin, President
E. M. Durham, Jr., Senior Vice-President
H. R. Safford, F. P. Johnson, Vice-President
E. J. White, Vice-President and General Manager
C. E. Perkins, Vice-President in Charge of Traffic
Herbert Fitzpatrick, Vice-President
W. G. Vollmer, Assistant to President
Wm. Wyer, Secretary & Treasurer
C. W. Veitch, Asst. Secretary & Asst. Treasurer
E. G. Wagner, Assistant Secretary & Assistant Treasurer
A. T. Cole, Asst. Secretary
W. J. Wright, Local Treasurer
T. M. Niven, General Auditor

Directors:

L. W. Baldwin, St. Louis
F. J. Shepard, New York
W. T. Kemper, Kansas City
W. P. Weber, Lake Charles, La.
A. D. Geoghegan, New Orleans, La.
J. R. Flippin, Memphis, Tenn.
Fred G. Hilvert, Phoenix, Ariz.
O. P. Van Sweringen
John Sherwin, Jr.
D. S. Barrett, Jr.
L. P. Ayres
H. G. Dalton
G. A. Tomlinson, Cleveland, O.
Alva Bradley, Cleveland, O.
W. W. Reilley, Buffalo, N. Y.

(Source: Moody's 1934—Railroads, p. 1592; 1595)

[fol. 51] Comstock Exhibit 21-B.

New Orleans, Texas & Mexico Railway Company—1933

Officers of Trustees:

Guy A. Thompson & L. W. Baldwin, Trustees, St. Louis, Mo.
H. R. Safford, Senior Executive Assistant, Houston, Tex.
E. M. Durham, Jr.
W. G. Vollmer, Executive Assistant
F. P. Johnson, Chief Accounting & Finance Officer
C. E. Perkins, Chief Traffic Officer, St. Louis, Mo.
A. Naylor, Secretary & Treasurer, Palestine, Texas
A. T. Cole, Asst. Secretary, St. Louis
M. Eckert, Auditor
W. G. Choate, Chief Operating Officer
E. J. White, Counsel
J. H. Lauderdale, General Purchasing Agent, St. Louis, Mo.

Corporate Officers:

O. P. Van Sweringen, Chairman, Cleveland, O.
L. W. Baldwin, President & Trustee, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
E. M. Durham, Jr., Vice-President
W. G. Vollmer, Assistant to President
F. P. Johnson
C. E. Perkins, Vice-President, St. Louis, Mo.
A. H. Sanford, Vice-President, New York
Herbert Fitzpatrick, Vice-President
Wm. Wyer, Secretary & Treasurer
C. W. Veitch, E. G. Wagner, Asst. Secretary & Asst. Treasurer, Cleveland, O.
R. McWilliams, Asst. Secretary, New Orleans, La.
A. T. Cole, Asst. Secretary, St. Louis, Mo.
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
Frank Andrews, General Solicitor, Houston, Tex.
A. Naylor, Asst. Secretary & Asst. Treasurer, Palestine, Tex.
M. Eckert, Auditor
W. A. H. Mau, Purchasing Agent, Houston, Tex.

Directors:

O. P. Van Sweringen
L. P. Ayres
D. S. Barrett, Jr.
Alva Bradley
H. G. Dalton
John Sherwin, Jr.
G. A. Tomlinson, Cleveland, O.
L. W. Baldwin, St. Louis, Mo.
Finley J. Shepard, New York
J. R. Flippin, Memphis, Tenn.
C. B. Fox
A. D. Geoghegan, New Orleans, La.
W. W. Reilley, Buffalo, N. Y.
H. R. Safford, Houston, Tex.
Wm. T. Kemper, Kansas City, Mo.

(Source: Moody's 1934—Railroads, p. 1617)

[fol. 52] Comstock Exhibit 21-C.

International-Great Northern Railroad Company—1933

Officers:

O. P. Van Sweringen, Chairman, Cleveland, O.
L. W. Baldwin, Trustee, St. Louis, Mo.
Guy A. Thompson, Trustee, St. Louis, Mo.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
F. P. Johnson, E. M. Durham, Jr., Vice-President, St. Louis, Mo.
Herbert Fitzpatrick, Vice-President, Cleveland
W. G. Vollmer, Asst. to President, St. Louis, Mo.
A. Naylor, Treasurer and Secretary, Palestine, Tex.
W. J. Wright, Asst. Treasurer
C. W. Veitch, Wm. Wyer, E. G. Wagner, Asst. Secretary & Asst. Treasurer, Cleveland
A. T. Cole, Asst. Secretary, St. Louis
W. J. Werner, Auditor, Palestine, Texas
W. R. H. Mau, Purchasing Agent
W. G. Choate, General Manager
Frank Andrews, General Solicitor, Houston, Tex.

Directors:

O. P. Van Sweringen, Cleveland, O.
L. W. Baldwin, St. Louis, Mo.
J. C. Jay, New York
Robert L. Calfee, Cleveland, O.
H. R. Safford
Frank Andrews, Houston, Tex.
Harry Landa, San Antonio, Tex.
R. E. Harding, Fort Worth, Tex.
J. L. Lancaster, Dallas, Tex.

(Source: Moody's 1934—Railroads, p. 1631)

[fol. 53] Comstock Exhibit 21-D.

The St. Louis, Brownsville & Mexico Railway Company—1933

Officers:

O. P. Van Sweringen, Chairman, Cleveland, O.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
E. M. Durham, Jr., F. P. Johnson, C. E. Perkins, Vice-President, St. Louis, Mo.
Herbert Fitzpatrick, Vice-President, Cleveland
R. J. Kleberg, Jr., Vice-President, Kingsville, Tex.
Wm. Wyer, Vice-President, Asst. Secretary & Asst. Treasurer, Cleveland
A. Naylor, Secretary & Treasurer, Palestine, Tex.
A. T. Cole, Asst. Secretary, St. Louis, Mo.
E. G. Wagner, C. W. Veitch, Asst. Secretary & Asst. Treasurer, Cleveland
M. Eckert, Auditor
Frank Andrews, General Solicitor, Houston, Tex.
E. H. Crenshaw, Jr., General Attorney, Kingsville, Tex.
W. G. Choate, General Manager, Houston, Tex.
C. S. Kirkpatrick, Chief Engineer
W. R. H. Mau, Purchasing Agent, Houston, Tex.

Directors:

O. P. Van Sweringen, Cleveland, O.
L. W. Baldwin, St. Louis, Mo.
Frank Andrews
W. G. Choate
H. R. Safford
J. E. Anderson, Houston, Tex.
R. J. Kleberg, Jr., Kingsville, Tex.
C. M. Armstrong, Armstrong, Tex.
A. B. Pierce, Blessing, Tex.

(Source: Moody's 1934—Railroads, p. 1640)

[fol. 54] Comstock Exhibit 21-E.

The Beaumont, Sour Lake & Western Railway Company—1933

Officers:

O. P. Van Sweringen, Chairman, Cleveland, O.
L. W. Baldwin, President, St. Louis, Mo.
H. R. Safford, Executive Vice-President, Houston, Tex.
Wm. Wyer, Vice-President, Asst. Secretary & Asst. Treasurer, Cleveland
F. P. Johnson, E. M. Durham, Jr., C. E. Perkins, Vice-President, St. Louis, Mo.
Herbert Fitzpatrick, Vice-President, Cleveland
A. Naylor, Secretary & Treasurer, Palestine, Tex.
A. T. Cole, Secretary of Board, St. Louis, Mo.
E. G. Wagner, C. W. Veitch, Asst. Secretary & Asst. Treasurer, Cleveland
M. Eckert, Auditor
Frank Andrews, General Solicitor
W. G. Choate, General Manager
C. S. Kirkpatrick, Chief Engineer
W. R. H. Mau, Purchasing Agent, Houston, Tex.

Directors:

O. P. Van Sweringen
D. S. Barrett, Jr., [Clevleand]
L. W. Baldwin, St. Louis, Mo.
R. W. Wier
H. R. Safford
Frank Andrews
W. G. Choate
J. E. Anderson
M. Eckert, Houston, Tex.

(Source: Moody's 1934—Railroads, p. 1628)

[fol. 55] Comstock Exhibit 22.

To charge to Profit and Loss—Miscellaneous Debits, Account 621, balance of $1,400,000.00 stated in Account 722, deferred assets uncollected at December 31, 1935, representing unpaid portion of dividend on Capital Stock of the St. Louis, Brownsville and Mexico Ry. Co. declared July 11, 1931, as per letter Mr. Alexander Wylie, Director, Bureau of Accounts, Interstate Commerce Commission, dated March 28, 1936, file D. C.—9500-X (b), copy attached to file copy of this entry.

Profit and Loss—Miscellaneous Debits (621). $1,400,000.00

To

The St. Louis, Brownsville and Mexico Railway Company — Dividends Receivable (722) 1,400,000.00

• • • •

I certify that the above is correct:

(Initialled in ink) M. E.

(Copy of New Orleans, Texas & Mexico Railway Company—

Journal Entry No. 27 (Prior Account) recorded during the month of March, 1936).

[fol. 56] Comstock Exhibit 23.

D. C. 9500-X(b)

Interstate Commerce Commission,
Bureau of Accounts
Washington, March 28, 1936.

Mr. M. Eckert,
Auditor, New Orleans, Texas and Mexico Railway Company,
Houston, Texas.

Dear Sir:

Under Schedule 200 A, "Comparative General Balance Sheet-Asset Side", in your Company's annual report to the Commission for the year 1934, an amount of $4,732,892.39 is reported against Account 717, "Interest and Dividends Receivable." It is understood that this amount included an item of $1,400,000.00 representing a part of a dividend declared by the St. Louis, Brownsville and Mexico Railway Company in the year 1931, and that this amount was credited to Account 513, "Dividend Income" in that year.

The text of Account 513 reads in part as follows:

"Dividends declared shall not be credited prior to actual collection unless their payment is reasonably assured by past experience, guaranty, anticipated provision, or otherwise."

When this dividend was declared your company was aware that the St. Louis, Brownsville, and Mexico Railway was without funds to pay it, and even on the basis of past experience the earnings of the company, had business continued good, would not have been adequate to make the payment until some future date. The recording of the dividend in Account 513 when declared was clearly in violation of the Commission's accounting rule hereinabove quoted.

While it is at this time too late to correct the income accounts which have already been closed, it is not too late to write off the unpaid portion of this dividend through

profit and loss. Please arrange to have this done in the current accounts, sending me a copy of the journal entry through which the accounting is accomplished.

[fol. 57] In this connection you are requested to furnish this bureau with a statement showing the items comprising the current balance in Account 717 together with your comments supporting their classification as current assets, within the provisions of Section 7 of the special instructions in the classification of Income, Profit and Loss and General Balance Sheet Accounts.

A prompt reply to this letter will be appreciated.

Yours very truly,

ALEXANDER WYLIE,
Director.

(Copy of letter (original) attached to N. O. T. & M. Ry. Co. Journal Entry No. 27, recorded in March 1936, and on file in the office of Mr. Martin Eckert, Auditor, N. O. T. & M. Ry. Co., Houston, Texas).

St Louis Brownsville & Mexico Railroad Co

Balance Sheet as at December 31, 1932 & 19

(Based on information obtained from Annual Reports filed with Interstate C

Assets	1932	1931	1930
Investments:			
Road & Equipment	29647798	29513850	29280774
Miscellaneous Physical Properties	259314	256401	244614
Investments in Affiliated Companies:			
Stocks	255951	255951	255951
Bonds	39500	39500	39500
Notes			
Advances	640775	554054	540900
Other Investments	63114	107	107
Current Assets:			
Cash	810000	600919	1145147
Special Deposits			
Loans & Bills Receivable	21591	17867	31590
Traffic & Car Service Balances	937	8040	8131
Net Balance Receivable from Agents & Co.	331794	514455	640331
Misc. Accounts Receivable	2011895	4557094	4461567
Materials & Supplies	2897159	3131141	5177284
Interest & Dividends Receivable	104437	58724	95153
Other Current Assets	13833	9747	9840
Working Fund Advances	12500	14381	19730
Total Current Assets		9018834	10505405
Deferred Assets:	2188443	8839724	7458547
Unadjusted Debits:			
Rents & Insurance paid in Advance	158870	1795143	649435
Other Unadjusted Debits	13208403	13976855	15991274
Total All Assets	37983318	39445076	38135396
Total Current Liabilities		3477999	3630555
Net Current Assets/Current Liabilities in Yr.		5540835	6874850

St Louis Brownsville & Mexico Railroad Co Page 1 of 2

Comstock Exhibit 24.

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Balance Sheet as of December 31, 1932 & 1924

(Based on segregation obtained from Annual Reports filed with Interstate Commerce Commission)

Assets	1932	1931	1930	1929	1928	1927	1926	1925	1924
Investments:									
Road & Equipment	29647796 98	29513118 50	29280771 74	28551562 86	26919588 85	25765390 60	25537133 70	19837250 64	16940777 33
Miscellaneous Physical Property	259314 87	256401 17	244614 68	241321 47	198538 94	191720 16	189344 44	183088 13	187655 77
Investments in Affiliated Companies -									
Stocks	255951 00	255951 00	255951 00	255951 00	255951 00	255951 00	255951 00	255951 00	255951 00
Bonds	39500 00	39500 00	39500 00	-					
Notes									
Advances	640775 87	554054 79	570900 16	501769 84	497311 62	230226 26	147786 41	96194 79	96118 01
Other Investments	63112 11	107 12	107 12	107 12	107 12	7678	7678	-	
Current Assets:									
Cash	81 70000	60 09194	114514 27	177285 05	130826 75	97238 96	38635 77	24044 98	19738 93
Special Deposits									
Special Deposits				275 00		500			
Loans & Bills Receivable	21591 90	17867 19	31590 08	70300 0	99796 1	113045 0	5450	5450	5784
Traffic & Car Service Balances	9237	8040	8131	11947	17167	17578		1970	2184
Net Balance Receivable from Agents & Conductors	331794 7	514455	640331	579196	496379	521347	704144	644496	874356
Misc Accounts Receivable	201189 8	457570 4	446153 67	376916 45	410293 04	534402 3	437657 3	387053 39	349716 0
Materials & Supplies	2897159 4	3131164 1	5177734 4	4895187 0	4277206 1	1171686 8	929843 2	533184 11	5165563
Interest & Dividends Receivable	104437 9	54774	29515 3	30385	47533	54686			
Other Current Assets	13833	4797	9844	7194 5	41077 8	57640 6	45348	74629	59040 7
Working Fund Advances	1225 01	1743 01	1023 01	1039 01	951 01	1493 01	1163 01	1057 01	5885
Deferred Assets:	2188443	883977	7457457	4918051	417588	319719	270406	243775	
Unadjusted Debits.									
Rents & Insurance paid in Advance	158870 4	174513	64935	64547	136398	88008	114035 4	71610	85476
Other Unadjusted Debits	1330840 3	1397685 4	1599	1835694	1661374	1313407	1371878	1113690	1228488
Total All Assets	37923318 16	37944585	19653	37747289	30767784	29643641	29015467	21815577	19135709
Total Current Assets		9013888	1050						
Total Current Liabilities		3479399	6911						
Net Current Position									

St. Louis Brownsville & Mexico Railroad Co

Balance Sheet at December 31, 1932 & 1928

(Read the explanations obtained from Annual Reports filed with Interstate Commerce Commission)

Comstock Ex

Liabilities	1932	1931	1930	1929	1928	1927	1926	1925	1924
Capital Stock	500000	500000	500000	500000	500000	500000	500000	500000	500000
Long Term Debt:									
Funded Debt	14745341 98	14973341 98	15201341 98	15429341 98	15657341 98	15885341 98	16113341 98	16913341 98	16913341 98
Amounts Payable to Affiliated Cos	900000	3400000	2400000	7500000	327649 36				
Current Liabilities:									
Traffic & Car Service Balances	940 90	19338 7	5418 0	978 15	19656 0	931 15		2161 18	43788 1
Audited Accounts & Wages Payable	596910 95	506356 83	774170 81	954547 06	659616 90	1042941 47	989170 37	589920 58	647864 37
Miscellaneous Accounts Payable	13247	16946 37	21949	17531 18	25944 16	15934 51	17648 96	18131 86	13755 93
Interest matured & Unpaid		4500	20500	27500		38745 86	38740 04		
Dividends matured & Unpaid	1400000 00	7500000 00							
Funded Debt matured & Unpaid									
Unmatured Interest Accrued	79808 38	159316 75	154327 38	85363 38	87150 42	89067 71	79755 37	64566 71	64566 71
Other Current Liabilities	3593 13	3734 46	3708 73	3574 93		17161 90	6954 19	3706 97	1545 46
Total Current Liabilities	2564830	2563584	2573670	2543924	1717454	1853000	1089518	1908047	1075476
		3463939 78	1189						
Deferred Liabilities - Other	90437	102198	28309 98	50179 34	19917 5	17329 91	15779 90	10065 8	7203 5
Unadjusted Credits:									
Accrued Depreciation - Equip	3952141 47	3805910 06	1769877 44	1673044 78	1397975 48	1178906 45	983143 16	813988 60	681467 47
" " - Misc Phys	18721	18347 8	16684 6	12728 48					
Other Unadjusted Credits	1075914 17	983639 19	827547 48	834700 85	689436 39	544845 17	274127 53	339717 54	176036 40
Operating Reserves									30783 65
Surplus:									
Appropriated Surplus	1036759 77	1034371 17	1016388 44	1004735 64	995113 96	967579 74	961964 3	912444 33	917716 11
Earned Surplus	1116046 39	813917 6	511393 55	445574 10	440735 83	389856 18	400705 94	339945 01	198617 9
Total all Liabilities	39033186	37944506 54	33153961	32474789 36	29757784 07	27643641 43	26901465 70	25155778	19135705 49

Comstock Exhibit 25

New Orleans, Texas & Mexico Railway Co Page 1 of 2

Balance Sheet at December 31, 1931 & 1924

(Based on information obtained from Annual Reports filed with Interstate Commerce Commission)

Assets	December 31st 1931	1930	1929	1928	1927	1926	1925	1924
Investments:								
Road & equipment property	19375207	19507902	19930570	19891804	19376796	19104134	18973571	18748078
Miscellaneous Physical Property	106816	107206	131779	143761	30657	39856	58181	97505
Investment in Affiliated Companies —								
Stocks	7306964	7306964	7306964	7306964	7002858	5947381	6036617	3575555
Bonds	2998284	2998284	2998284	2998284	3140284	3151617	2085488	2026357
Notes	—	—	—	—	90600	90600	90600	937608
Advances	435639	734505	1930804	1672707	1828554	1083246	1018917	705964
Other Investments	17026	17074	13109	27985	8478	13510	9670	8945
Current Assets								
Cash & Deposits	79010	134796	364776	2545174	3579721	2589273	5497453	1845914
Special Deposits	120826	167477	136279	135643	[illegible]	1297228	[illegible]	2140204
Loans & Bills Receivable	7677	5944	8548		7515	11383		3001
Traffic & Car Service Balances	373796	474413	648543	820419	705824	485177	424739	676407
Net Balances Receivable from Agents & Conductors	6068	6757	8990	10400	8491	11647	16414	17500
Miscellaneous Accounts Receivable	578898	980847	739016	908450	814770	728817	673982	813006
Materials & Supplies	1257687	1222915	1075638	1300241	1202435	1202435	1174362	1131000
Interest & Dividends Receivable	348584	411894	1454756	1199877	980688	1179756	1018014	822608
Other Current Assets	3997	419	2574	10741	12411	12460	12460	12460
Total Current assets	2557497	3377233	4497761	4394139	4098718	3769444	3987693	5813594
Deferred Assets — Other	30168	29644	10353	17814	16742	15744	11496	8167
Unadjusted Debits:								
Rents & Insurance funds & Other	18200	15209	8988	7826	18607	20206	14876	13222
Other Unadjusted Debits →	1610497	1388936	1458506	1190743	957965	826429	648144	439045
Total Assets	25532749	23455351	23271171	23244476	22878545	22994347	23010816	23584886
Percent of Unadjusted Debits to Total Assets	21%	19%	19%	18%	14%	14%	8%	8%
Percent of Unadjusted Debits to Owned Assets	36%	21%	27%	27%	18%	18%	9%	3%

New Orleans, Texas & Mexico Railway Co.

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Comstock Exhib

Balance Sheet as December 31, 1931 & 1930

(Book information obtained from Annual Reports filed with Interstate Commerce Commission)

Liabilities	December 31st 1931	1930	1929	1928	1927	1926	1925	1924
Stock:								
Capital Stock	15000000	15000000	15000000	15000000	15000000	15000000	15000000	15000000
Long Term Debt:								
Funded Debt	47972000	47972000	47972000	47972000	37972000	37972000	37972000	29857000
Amounts Payable to Affiliated Companies	1045163	3604470	4629178	3589178	1183681	3376000		—
Current Liabilities:								
Loans & Bills Payable	—	—	—	—	—	1488729	—	—
Drafts & Accepted Balances Payable	173091	247344	476047	471227	640543	476948	818018	577131
Audited Accounts & Wages Payable	701051	800994	1017203	1051334	733573	1000170	1289474	805820
Miscellaneous Accounts Payable	31171	17960	22838	17647	16709	38111	29796	19779
Interest Matured & Unpaid	26761	28534	49500	41363	41097	43748	45345	47157
Dividends Matured & Unpaid	1643	1643	1643	1521	1521			—
Unmatured Interest Accrued	854690	706496	1018899	1085764	1065629	982786	1010558	1042484
Taxes Accrued - Payroll	643958	638496	629834	858963	801548	866448	834689	609388
Other Unmatured Liabilities	1208	1214	1258	1068	1272	3121	1893	1051
Unmatured Interest & Unpaid								
Total Current Liabilities	1850763	1913196	2738424	3156842	3325652	3371555	4126514	3590658
Deferred Liabilities - Other	4987	3071	3033	15901	6444	33559	11355	888888
Unadjusted Credits:								
Accrued Depreciation	4885962	3916974	4885904	4829821	4826021	4825321	4824111	4810326
Other Unadjusted Credits	476657	338817	414102	476468	369089	398364	444076	358844	328158
Surplus:								
Appropriated Surplus	466029	336029	342647	281149	248819	278317	312619	325682
Earned Surplus	13459651	7725454	9176042	7961468	7661088	6748381	8068491	10588481
Total Liabilities	32476539	25525454	31411269	29481687	28845849	31284381	33588535	32991492

Comstock Exhibit 26.

St Louis Brownsville & Mexico Railway Co

Income Account Year 1931

(Items compiled from Annual Report filed with Interstate Commerce Commission)

Particulars		Amount
Railway Operating Revenues	$6119506.00	
Railway Operating Expenses	4119586.00	
Net Revenue		$1999920.00
Railway Tax Accruals	264154.00	
Uncollectible Railway Revenues	39400	266192.00
Railway Operating Income		1733814.00
Rent from Locomotives	318491.00	
" Passenger Cars	77857.00	
" Work Equipment	6698.00	
Joint Facility Rent Income	17888.00	
Misc. Rent Income	41535.00	
Misc. Non-Operating Physical Property	750.0	
Income from Funded Securities	4468.00	
" " Unfunded Securities	518.00	
Miscellaneous	6860.00	476738
Income Available for Fixed Charges		2196542
Rent for Leased Roads	36565.51	
Rent for Locomotives	28024.3	
Passenger Train Cars	11389.95	
Work Equipment	7855.00	
Joint Facility Rent	14337.46	
Miscellaneous Rents	485	
Miscellaneous Int. Accruals	464	
Interest on Funded Debt	879783	
Interest on Unfunded Debt	6647.00	1798664
Income for 1931		397878

New Orleans Texas & Mexico Railway Company

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Comstock Exhibit 27.

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Cash Receipts & Disbursements Recorded in New York & in Cleveland Cash Items kept in Book "A" Journ Record from 4/1/98 to 12/31/23

Month	Balance at Beginning of month	Receipts - New York Received from Mr Thompson	Received from Others	Miscellaneous Receipts	Total Receipts	Total Balance Available	Check No	Disbursements - New York Amount	Payee	Description
March 1919	2781.94	500000	450000	10276	950102.76	952884.68	1370	93705 149726	Jersey Trust Co - Comptroller Mise Debit	Deposit on Bonds $70,705 Par Value
July 1919	134184.92	175000		57497	1685397	2819582	1383	954029.96 2433758.00 188686 2499386.86	Jersey Trust Co - Comptroller Mise Debit	Deposit Series C Bds
Aug 1919	103106	275000		3557	378557	2856778	1397	2795735 11493	Jersey Trust Co - Bond Dept Mise Debit	Dividend 1½% on 1st P.F. Pfd Stock
Sept 1919	2497679	850000		16646	850166.46	8751079	1404	260700.47 8693100.00 2184.22 8719994.22	Jersey Trust Co - Comptroller Mise Debit	Deposit on Bonds
Oct 1919	364813	150000		25458.82	175458.82	1791073	1417	147900 267967 1499756.7	Jersey Trust Co Mise Debit	Expenses Matured 116000 Int 31900
Nov 1919	291768	310000		31047	310347	3394415	1447 1449	2795735 6350000 130777 3249837.7	Jersey Trust Co - Bond Dept " " " - Comptroller Mise Debit Memo	Dividend 1½% Pfd Stock Int on Equipment Agmt Series B
Jan 1920	194593	100000	from W. Hunter 500000	Jersey Trust Co 98166.01 55319	243718.20	2649232.52	1468	2477500 166218 2499717.18	Jersey Trust Co - Comptroller Mise Debit	Interest Series C Bds
February 1920	135635	260000		31114	260311.48	2738764.9	1481	2795735 144893	Jersey Trust Co - Bond Dept Mise Debit	Dividend 1½% on 4% Pfd 1½%
March 1920	1485161	430000	from Hunter 500000	17943	930179.43	9430214.4	1498	261.02.468 9318.1000 192786 9332.37.86	Jersey Trust Co - Comptroller Mise Debit	Debenture & Coupons $2,000
May 1920	4147.04	275000		1434.7	235143.47	2392290.51	1544 1544	2795735.25 1737500 241630 2748367.05	Jersey Trust Co - Bond Dept " " " - Comptroller Mise Debit	Dividend 1½% 1st Pfd Stock Interest Series B
July 1920	2774.17			2704434.47	2707209.64	2733118.54	1574	2477500.0 73969 2848969	J P Morgan & Co - Comptroller Mise Debit	Interest Series "C" Bds
Sub Total		3775000	1800000							

New Orleans Texas & Mexico Railway Company

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Statement of Actual Receipts & Disbursements Recorded in New York & at Cleveland
Cash Items Cash Book "A" During Period from 4/1/14 to 3/31/32

Months	Balance at Beginning of Months	Receipts - Cleveland Receipts from Missouri Pacific	Receipts - Cleveland Receipts from Others	Receipts - Cleveland New Receipts	Receipts - Cleveland Total Receipts	Total Balance and Receipts Available	Check No.	Disbursements Amounts	Disbursements Paid
	Forwarded	3775000	1005998 Hundred Ninety Eight						
September 1930	3141049	550000	300000	2921993	8792193	9106972	1537	8679500 128460 8679960	J.P. Morgan Mem Acct
Nov 1930	4542198	300000		3172155	3312155	3766353	1589 Note "A"	2195025 30000000 3219075 86517 3778159	J.P. Morgan Mem Acct
Dec 1930	5382766	50000		3502281	3502281	3885047	1593	9311500 48000 9359500	Irving Trust Mem Acct
Jan 1931	4575547	247750		4803143	2957893	3410690	Note A	24775000 41650 24816650	J.P. Morgan Mem Acct
Feb 1931	9287040	75000	Jan Items 9311500 2808458	1961958	2890698		Note "A"	25757575 120139 25877714	J.P. Morgan Mem Acct

Comstock Exhibit 27.

Ry 2 & 4

...n Railway Company

Cleveland in New York & in Cleveland
from 4/1/[illegible] to 2/[illegible]/[illegible]

...ts - Cleveland ... fund	Cleveland Mine Receipts	Total Receipts	Total Balance and Receipts Available	Check No.	Amount	Disbursements - Cleveland Payee	Description
3PM 000	2921923	8792192 3	9106792	1574	86791500 128460 86919960	J.P. Morgan & Co - Coupons Mine Equipment	Interest
	3122155	3316155	3766453	1589 Note "A"	2195075 30000000 3219575 86517 3306092	J.P. Morgan & Co Mine Equip	3595375. (2375	Cleveland Motor Co. Stock Purchase Money Mortgage
	8500781	8500781	13885047	1593	9311500 48000 9359500	Guaranty Trust Co. Mine Equip.	Sundry Disbursements A & C.
	4803143	2957814 3	3410369 0	Note A	24775000 41650 24816650	J.P. Morgan & Co Mine Equip	Amount Deposited for payment of Bonds and Coupons
	Guaranty Trust Co 9311500 2308458	1961948	2890698	Note "A"	25957575 120139 26077714	J.P. Morgan & Co Mine Equip	Cleveland Motor Co. Stock.

									91 26	Miss Dun
									7381 0626	
May 1931	5985493	200000		4310437	2431043	302959 25		Note "A"	2708575	J P Morgan
									750 10	Miss Dun
									271575 85	
August 1931	4868948	750000		1471908	2647190	3134085 76		Note "A"	2959525 25	J P Morgan
									899 75	Miss Dun
									2604756	
Sept 1931	5793356	850000		1761488	4761488	9155484 44		Note "A"	8665000	J P Morgan
									21173	Miss Dun
									8667173	
Oct 1931	4881671	1750000		1837995	1433795	1921966		Note A	1417000	J P Morgan
									28338	Miss Dun
									1449338	
Sub Total		6847750	1300000							

Comstock Exhibit 27.

New Orleans Texas & Mexico Railway Company

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Statement of Cotton Receipts & Disbursements Received from New York & New Orleans
over Sight Draft Book "A" during March & April 1923

Month	Balance at Beginning of Month	Receipts - Cleveland: Received from Memphis	Received from others	Mine Receipts	Total Receipts	Total Balance and Receipts Available	Check No	Disbursements - Cleveland: Amount	Payee	Description
Nov 1921		634175	1350000 00							
	47 [illegible] 16	300000		1399400	3179961 00	3157[illegible] 5	Draft "A"	320[illegible] 95	J.P. Morgan & Co	Remit Draft Proceeds 259735 95
								629[illegible]	Mine Book	61750 00
								3211[illegible] 5		3211[illegible] 5
Dec 1921	43807 97	7500 0		1757193	9[illegible] 193	1260690	Draft "A"	98 11[illegible]	Henry Jones & Co	Henry Jones Account
								202998	Mine Book	
								3011[illegible]		
Jan 1922	40 90[illegible] 34	20000 0		2[illegible] 173	2[illegible] 23	2736[illegible] 36	Draft "A"	24[illegible] 5	J.P. Morgan & Co	Draft on "B" & "D" Banks
								29[illegible]	Mine Book	
								2[illegible]		
February 1922	23 31[illegible] 68		Draft Not in 10000 0	Henry Jones 70 11[illegible] Cotton 1[illegible]	7[illegible] 24	96 08[illegible] 94	1676 Draft A	17[illegible] 100 000 [illegible]	Interior Receiving & Shipping Co / Mine Book	Shipping & Insurance
								[illegible]		
April 1922	20 81[illegible] 14	9[illegible] 000		17[illegible] 17	9[illegible] 50	96 [illegible] 14	Draft A	9[illegible] 00	J.P. Morgan & Co	Insurance & Compress Charges
								[illegible]		
								2[illegible]		
June 1922	25 25[illegible] 3		Draft Not in 150000	38[illegible] 81	28[illegible] 81	309 [illegible] 4		1[illegible] 4[illegible]	J.P. Morgan & Co / Interior Receiving Co	Insurance Compress Charges
								18[illegible]		
August 1922	31 03[illegible] 56	60 000		[illegible] 71	64[illegible] 71	37[illegible] 27	Draft A 9	.34[illegible] 6000000	J.P. Morgan & Co / Interior Receiving Co	Insurance Compress Charges & Insurance
								43[illegible]	Mine Book	
								301 [illegible]		
October 1922	74 43[illegible] 80	500000	Draft Not in 189700	75[illegible] 01	94[illegible] 01	10[illegible] 81	Draft A	58[illegible] 139[illegible]	J.P. Morgan & Co / " " "	Insurance Compress Charges Ship Canal
								42[illegible]	Mine Book	
								100[illegible]		
Nov 1922	16 31[illegible] 17	35000		14[illegible]	49[illegible]	64 [illegible] 49		60 [illegible] 38[illegible]	J.P. Morgan & Co / Mine Book	Insurance [illegible] Compress Charges
								63[illegible]		
Dec 1922	26 [illegible] 06	79000		14[illegible]	93[illegible]	35 96[illegible]		90 11[illegible] 38[illegible]	Henry Jones Co	Insurance & Cotton Shipping Co
								[illegible]		

New Orleans Terminal & Mississippi Railway Company Page 474

Statement of Balance Receipts & Disbursements Recorded in New York & in Cleveland
Acct Terminal Bond Book "A" During Period from 9/1/32 to 2/28/33

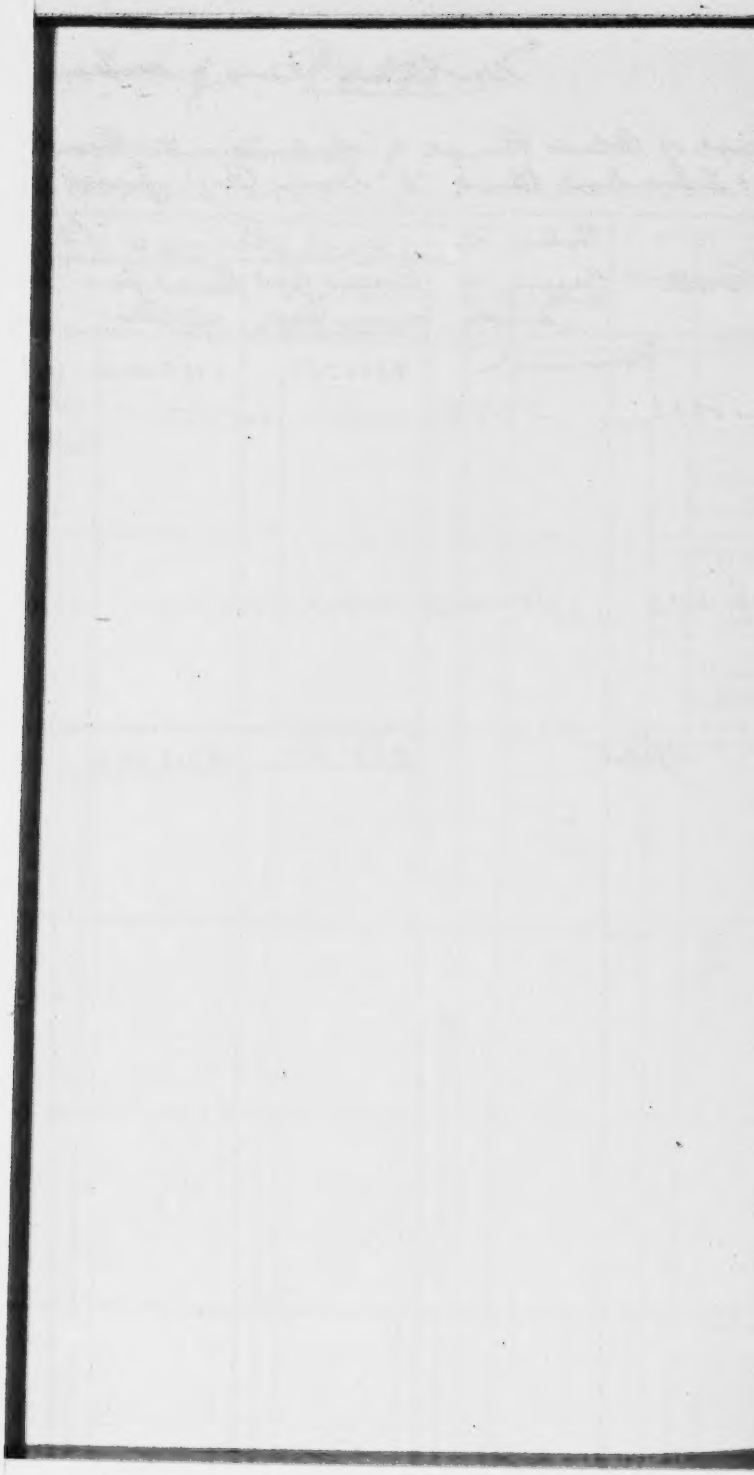
Month	Balance at Beginning of Month	Receipts - Cleveland: Received from Mississippi Receipts	Received from Others	Miscellaneous Receipts	Total Receipts	Total Balance and Receipts Available	Check No	Disbursements - Cleveland: Amount	
	Recommended								
Jan 1933	245899	9321750	1789200	Terminal 9311500 Miss 27627.28	11587728	11833627	1649	7900000	Miss Term
								97124	Miss Term
								7997124	
Feb 1933	3836453	210000		142887	2164887	2547340	Note A	2477500	J P Morgan & Co
								37000	Miss Term
								2514500	
Total		9531750	1789200						

Adv
Repay
Adv
1/3/
Del Adv

...& Memphis Railway Company Page 474

...ements Recorded in New York & Cleveland
...Paid from 9/16/21 to 3/31/22

Receipts - Cleveland: Received from Others	Misc. Rcpts	Total Rcpts	Total Balance and Rcpts Available	Check No	Disbursements - Cleveland: Amount	Payee	Purpose
1789200	Long Lumber 93 11 500 Ste 77 66 28	115877 28	1183306 28	1649	7900000 97174 7997174	Manufacturers Rcpts & Disb Mfrs Bank	Balance to Cleveland
	64887	2164887	3547393 40	Note A	2477500 37000 2514500	J.P. Morgan & Co Mfrs Bank	Advances on Short Term Notes
1789200							
					Advances		953175
					Repayments 2/25/22	375000	
					5/2/22	60000	
					11/3/22	79000	
							364000
					Net Advances 2/1/22 to 3/31/22		911775



[fol. 67]

Comstock Exhibit 28.

Checks drawn by Missouri Pacific to New Orleans, T. & M. beginning March, 1929.

Date	No. of Check	Amount	Signed by	Endorsed by
Mar. 30/29	8547	$ 500,000.00	O. B. Huntsman, Ass't Treasurer	O. B. Huntsman, Ass't Treasurer
Jul. 31/29	9106	125,000.00	ditto	ditto
Aug. 31/29	9236	275,000.00	ditto	ditto
Sep. 30/29	9338	850,000.00	ditto	ditto
Oct. 31/29	9423	150,000.00	ditto	ditto
Nov. 29/29	9536	310,000.00	ditto	ditto
Jan. 30/30	9870	100,000.00	ditto	ditto
Feb. 28/30	10085	260,000.00	ditto	ditto
Mar. 31/30	10243	430,000.00	ditto	[See Note 4]
May 31/30	10558	275,000.00	ditto	O. B. Huntsman, Ass't Treasurer
Sep. 29/30	10890	550,000.00	Edwin S. Wagner, Ass't Treasurer	Wm. Wyer, Ass't Treasurer
Dec. 29/31	10982	75,000.00	ditto	Wm. Wyer, Treasurer
Jan. 28/32	10985	200,000.00	ditto	ditto
	Total	$4,109,000.00		

Notes:

1. All checks drawn on Guaranty Trust Company of New York.

2. Endorsements of all checks except #10243 are stamped endorsements.

3. Checks endorsed by O. B. Huntsman bear a written signature as part of the endorsement. Checks endorsed by Wm. Wyer contain no written signature; the words "Wm. Wyer" being part of the endorsement stamp.

[fol. 68]

4. Check #10243 does not bear stamped endorsement, endorsement being in writing and containing illegible initials.

5. Check #8547 deposited with American Exchange Irving Trust Company. All other checks deposited with Irving Trust Company.

[fol. 69] Comstock Exhibit 29.

Missouri Pacific Railroad Company

November 26, 1930

Messrs. J. P. Morgan & Co.,
23 Wall Street
New York, N. Y.

Dear Sirs:

Please find enclosed this Company's voucher in the amount of $779,600.00 covering our December 1, 1930 requirements.

On November 13th you placed to the credit of this Company's	$ 800,000.00
You have been requested to credit our account on November 29, 1930 with dividends from New Orleans, Texas & Mexico Railway Company stock	243,360.25
You will find enclosed this Company's check in amount	186,239.75
	$1,229,600.00

This will serve as your authority to charge against the above amount on November 29, 1930, credit New Orleans, Texas & Mexico Railway Company $300,000.00; credit of International-Great Northern Railroad Company, $150,000.00. This amount with the $779,600.00 called for by the attached voucher will exhaust the $1,229,600.00 mentioned above.

Yours very truly,

WM. WYER
Treasurer

EGW/STC
(copy)

[fol. 70] Comstock Exhibit J.

Missouri Pacific Railroad Company

December 24, 1930

Messrs. J. P. Morgan & Co.
23 Wall Street
New York, N. Y.

Dear Sirs: Attention Mr. J. Francis Atterbury

Please find enclosed this Company's voucher in the amount of $935,350 representing dividends on 696,820 shares of preferred stock payable December 31, 1930, and interest of $64,325, payable January 1, 1931, on Pacific Railroad of Missouri Second Mortgage Bonds.

On December 31, 1930, kindly credit our account with:

Proceeds of note	$1,900,000
Dividends on Common Stock of The Texas and Pacific Railway Company	286,750
	$2,186,750

and charge our account with:

Amount of attached voucher	935,350
Credit International-Great Northern Railroad Company's account at your office on December 31, 1930	750,000
Deposit to credit of New Orleans, Texas & Mexico Railway Company at Irving Trust Company on Dec. 31, 1930	50,000
Deposit to credit of Missouri Pacific Railroad Company at Guaranty Trust Company of New York on Dec. 31, 1930	451,400
	$2,186,750

Kindly acknowledge receipt by signing and returning the attached copy of this letter.

Yours very truly,

EGW/STC Treasurer

/s/ J. P. MORGAN & CO.

[fol. 71] Comstock Exhibit 31.

Missouri Pacific Railroad Company

Copy of Letter
Supporting Non-Negotiable Treas. Voucher #31
January 31, 1931

January 28, 1931

J. P. Morgan & Co.
23 Wall Street
New York, New York

Attention Mr. J. F. Atterbury

Dear Sirs:

In accordance with arrangements heretofore made you are to credit our account on January 31, with the proceeds of our note in the amount of $1,200,000.

On that day kindly make the following changes against our account.

Non-Negotiable Voucher sent you herewith	$ 768,767.50
Credit N. O. T. M. Company at your office	247,750.00
Deposit to credit of the M. P. R. Co. at Guaranty Trust Co. of N. Y.....	183,482.50
	$1,200,000.00

Kindly endorse the enclosed voucher and return to me.

Yours very truly,

WM. WYER
Treasurer

EGW:HSN

Copy attached to Guaranty Trust Co. Check Stub Book Stub 10948 Book #10501 to 11000—

[fol. 72] Comstock Exhibit 32.

Missouri Pacific Railroad Company

March 25, 1931

File 217.4

Messrs. J. P. Morgan & Co.,
23 Wall Street
New York, N. Y.

Dear Sirs: Attention Mr. J. Francis Atterbury

Please find enclosed this Company's non-negotiable voucher in the amount of.....$45,447,356.25

covering requirements at your office on April 1st, 1931.

You are hereby authorized to credit the account of New Orleans Texas & Mexico Railway Company on March 31, 1931..... 925,000.00

You are hereby authorized to credit the account of International-Great Northern Railroad Company on March 31, 1931..... 148,590.00

$46,520,946.25

To meet these requirements:

Guaranty Trust Company of New York now holds $42,874,000 of this Company's funds in a Special Account and as the St. Louis, Iron Mountain and Southern Railway Company General Consolidated Railway and Land Grant Mortgage Bonds are taken up you will secure reimbursement by surrendering such Bonds to the Guaranty Trust Company who will hold them as Trustee of this Company's First and Refunding Mortgage.....	42,874,000.00
You are to credit our account on March 31, 1931 with dividends on the Common Stock of the Texas & Pacific Railway Company.....	286,875.00
[fol. 73] In accordance with arrangements heretofore made you are to credit our account on March 31, 1931, with the proceeds of our note	3,000,000.00
The Texas and Pacific Railway Company is today authorizing you to credit our account at your office on March 31, 1931.....	296,287.50
We enclose your check on the Guaranty Trust Company in the amount of.....	63,783.75
Total	$46,520,946.25

Kindly endorse and return the non-negotiable voucher.

Yours very truly,

WM. WYER
Treasurer

EGW:JF

[fol. 74] Comstock Exhibit 33.

Missouri Pacific Railroad Co.

Sept. 25, 1931

File 217-4

Messrs. J. P. Morgan Co.,
23 Wall Street,
New York, N. Y.

Dear Sirs: Att. Mr. J. F. Atterbury

Attached hereto is this Company's non-negotiable vouchers in the amount of.....	1501775.00
You are hereby authorized to credit the account of N. O. T. M. on 9/30/31.....	850000.00
	2351775.00

To meet these requirements:

You are to credit our account on 9/30/31 with dividend on the common stock of the T & P...	286875.00
T & P. is today authorizing you to credit our account at your office on 9/30/31.....	296287.50
We enclose our check on the Guarantee Trust Co. of New York dated 9/30/31 in the amount of	1768612.50
	2351775.00

Kindly endorse and return non-negotiable voucher.

Yours very truly

WM. WYER

Attached to Guarantee Trust Co stub #10972

[fol. 75] Comstock Exhibit 34.

Missouri Pacific Railroad

October 24, 1931

File 217.4

Messrs. J. P. Morgan & Co.
23 Wall Street
New York, N. Y.

Att: J. F. Atterbury

Dear Sirs:

There is attached hereto Missouri Pacific Railroad Co. non-negotiable Voucher covering principal and interest payments on obligations of this Company due and payable at your office November 1, 1931 in the amount of	3,505,332.50
You are hereby authorized to credit the account of N. O. T. M. on 10/31/31.....	125,000.00
	3,630,332.50

To provide funds:

As previously arranged you are to credit our account on 10/31/31 with the proceeds of our note	1,600,000.00
We enclose our check on the Guarantee Trust Co., New York.....	2,030,332.50
	3,630,332.50

Kindly endorse and return the non-negotiable voucher.

Yours very truly,

WM. WYER
Treas.

Attached to stub 10975—Guarantee Trust Co.

[fol. 76] Comstock Exhibit 35.

Missouri Pacific Railroad Company

March 28, 1932
File: 217.4

Messrs. J. P. Morgan & Co.
23 Wall Street
New York, N. Y.

Attention Mr. J. Francis Atterbury

Dear Sirs:

We hand you herewith check of The Texas and Pacific Railway Company in our favor, dated March 31, 1932, and endorsed for..... $ 296,287.50

On March 31, 1932, we will remit to you an additional amount of..... 7,400,000.00

Please credit these items, totaling..... $7,696,287.50 to our Demand Account.

On April 1, 1932, please charge our Demand Account in the amount of $1,695,343.75, and credit the following:

International-Great Northern Railroad Company Demand Account.....	$ 140,000.00
New Orleans, Texas & Mexico Railway Company Demand Account.....	925,000.00
Missouri Pacific sundry accounts:	
Interest—First and Refunding Mortgage Bonds Series H.....	625,000.00
Interest—Pacific R. R. of Mo. Carondelet Branch Bonds.....	5,343.75
	$1,695,343.75

Please sign and return the non-negotiable voucher attached.

Yours very truly,

EDWIN G. WAGNER
Assistant Treasurer

EGW:STC

[fol. 77] Comstock Exhibit 36.

Missouri Pacific Railroad Company

September 26, 1932
File 218.4

J. P. Morgan & Co.
23 Wall Street
New York, N. Y.

Attention Mr. J. Francis Atterbury

Dear Sirs:

We enclose check in your favor, drawn on the Guaranty Trust Company of New York, dated September 30, 1932, in the amount of $1,450,000, which please place to the credit of our Demand Account.

As of October 1, 1932, you are hereby authorized to transfer $820,000. from the Missouri Pacific Railroad Company Demand Account to the Demand Accounts of the following companies:

New Orleans, Texas & Mexico Railway Company	$800,000.00
International-Great Northern Railroad Company	20,000.00
Total	$820,000.00

Also, on October 1, 1932 please charge our Demand Account with $630,343.75, and credit our sundry accounts as follows:

Pacific R. R. of Mo. Carondelet Br. 1st Mtge. 4½% Bonds	$ 5,343.75
Mo. Pac. R. R. Co. First & Ref. Mtge. 5% Bonds, Ser. H	625,000.00
Total	$630,343.75

Please sign and return the non-negotiable voucher attached.

Yours very truly,

WM. WYER
Treasurer.

LFM:HGD

[fol. 78] Comstock Exhibit 37.

New Orleans, Texas and Mexico Railway Co.

Approximate Agency of Family Line Bills Attached to Joint Voucher #56 Dated 12/31/33

Age at 12/31/33	Due From				
	St.L.B.&M.	B.S.L.&W.RR.	O.N.W.	N.I.N.RR.Co.	Total
7 years.	.....	.....	.....	80,252.94	80,252.94
6 years.	.....	.....	.....	152,499.66	152,499.66
5 years.	435,330.45	271,898.98	.....	159,024.45	866,253.91
4 years.	1,967,791.47	882,226.50	4,293.24	189,997.71	3,044,308.92
3 years.	3,036,992.75	855,967.72	5,486.37	168,685.28	4,060,132.12
2 years.	2,923,661.07	896,211.08	93,967.26	206,109.82	4,125,049.23
1 year..	1,857,461.98	596,100.53	76,761.65	203,833.90	2,734,166.05
Less than one year.	453,093.35	85,934.80	17,603.16	45,349.45	598,980.76
Total...	10,664,333.10	3,583,548.60	201,111.78	1,305,753.21	15,659,743.69

[fol. 79] Comstock Exhibit 38.

New Orleans, Texas and Mexico Railway Co.

Other Unadjusted Debits—As Contained in Annual Reports to Interstate Commerce Commission at Close of Each Year From December 31, 1924 to December 31, 1932.

Year ended	Family line bills	Other items	Total other unadjusted debits per reports to Interstate Commerce Commission	Family line bills increase during year
December 31, 1924...	$ 2,464,959.90	$336,260.10	$ 2,801,220.00	$ .....
December 31, 1925...	4,060,909.62	332,233.32	4,393,143.00	1,595,949.72
December 31, 1926...	4,171,200.40	276,921.37	4,448,121.77	110,290.72
December 31, 1927...	8,236,166.45	395,892.63	8,632,059.08	4,064,966.05
December 31, 1928...	9,264,182.15	308,183.14	9,572,365.29	1,028,015.70
December 31, 1929...	11,646,567.70	290,575.71	11,937,143.41	2,382,385.55
December 31, 1930...	12,187,353.69	271,152.75	12,458,506.44	540,785.99
December 31, 1931...	14,148,687.98	240,248.65	14,388,936.63	1,961,334.29
December 31, 1932...	15,867,538.70	233,958.44	16,101,497.14	1,718,850.72
Total increase in family line bills during eight year period January 1, 1925 to December 31, 1932.....				$13,402,578.80

The Beaumont Sour Lake & Western Railway

Balance Sheets December 31, 1912 & December 31, 1913

(Based on information obtained from Annual Reports filed with the Interstate Commerce Commission)

Assets		Dec 31, 1909	Dec 31, 1910	Dec 31, 1911	Dec 31, 1912	Dec 31, 1913	Dec
Investments —	Road & Equip.	3469845.78	3551360.14	3655185.46	3796720.55	3785623.57	41
	Misc. Physical Prop.	1111499	1077303	3704365	3329696	2181308	
	Affiliated Co. — Stocks	67500	67500	67500	1070954	67500	
	Bonds				8500000		
	Notes						
	Advances	961179	961179	1477864.0	1879845.47	6790690	7
Other Investments							
Cash		743584.9	945080.7	870702.6	737881.6	884412.5	
Special Deposits							
Loans & Bills Receivable							
Traffic & Car Service Balances		6138.5			181950.1	147537	
Net Balance Rec. Agents & Conductors		34799.9	45484.7	76948.9	45881.8	43360.7	
Misc. Accts. Rec.		389587	476843.0	473173.9	295473	360074	
Materials & Supplies					378219	185561	
Interest & Dividends Rec.					91970.0	47.5	
Rents Receivable							
Other Current Assets		27249.5	38856.7	49417.7	77293.9	79044.3	
Working Fund Advances		15800.7	8836.0	10776.0	10956.0	13456.0	
Other Deferred Assets			438	6165	220	438	
Rents & Insurance Prem. + Advances		1006.75	959	634.54	33929	49871.1	
Other Unadjusted Debits		4404116.8	4135160.5	4030690.6	3257159.7	4441793	3
		9784273.43	9763963.7	9784144.9	9964976.7	10281458.03	5

Comstock Exhibit 39.

Dec 31, 1928	Dec 31, 1929	Dec 31, 1930	Dec 31, 1931	Dec 31, 1932
787563	4154411	4280216	4321600	4431977
218308	2575304	2027481	2027481	2027481
695000	695000	695000	650000	695000
747	747,336.10	744937.25	768 106 20	806 264 97
884	1197	606	214	4
19	695			53
	26	7	50	58
43	34	24	187	177
36	34	27	41	18
1	27	18	15	17
4	30			
79	78	48	219	24
13	25	27	25	18
4	11	5	6	7
49	27	11	5	4
41	34	28	19	20

The Bessemer Iron Lake & Western

Balance Sheets

(Bond Co. supplementary statement for annual report filed with Interstate Commerce Commission)

Liabilities	Dec 31, 1914	Dec 31, 1915	Dec 31, 1916	Dec 31, 1917	Dec 31, 1918	
Capital Stock	85000	85000	85000	85000	85000	
Long Term Debt	2057824 74	2057824 74	2057824 74	2057824 74	2057824 74	
Non-Neg. Debt to Affiliated Companies	164473	164473	164473	920 164 10	1385203	
Loans & Bills Payable						
Traffic & Car Service Balances Payable				21 40 85	45 09 25	
Audited Accts & Wages Payable	138 18 00	117 09 21	1 59 04 69	3 59 11 97	170 91 06	
Misc Accts Payable	99 59 73	85 18 03	98 00 87	1 40 04 08	107 60 60	
Interest Matured & Unpaid						
Dividends Matured & Unpaid						
Funded Debt Matured & Unpaid						
Unmatured Rents					85000 04	
Unmatured Interest Accrued	20578 74	20578 74	20578 74	20578 74	20578 74	
Other Current Liabilities	35 74 13	10 16 97	17 10 74	10 16 98	6 00 37	
Other Deferred Liabilities		100	-		200	
Tax Liabilities	26 81 87	39 37 00	58 90 45 74	R (107 67)	(9000)	
Accrued Depreciation Equip						
" " Misc Phys						
Other Unadjusted Credits	1 [illegible] 74	1 19 55 06 74	1 43 80 04 45	2 58 89 05 79	2 34 05 35 03	2
Operating Reserves	✓	✓	✓	✓	✓	
Additions & Betts. through Income	115 90 87	115 31 07	116 26 88	118 56 41	118 77 1 70	
Earned Surplus.	57 79 50 58	57 47 90 70	56 08 42 85	35 40 78 05	24 43 50 17	
R = Red	✓	✓	✓	✓	✓	
	[illegible] 74	[illegible] 43	6 49 26 49	6 49 72 61 98	5 05 14 58 03 54	

Comstock Exhibit 39.

Lake v. Watters

Dec. 31, 1919 & Dec. 31, 1920

(As filed in Lake v. Watters)

	Dec. 31, 1915	Dec. 31, 1916	Dec. 31, 1917	Dec. 31, 1918	Dec. 31, 1919	Dec. 31, 1920	Dec. 31, 1921	Dec. 31, 1922	
	85000	85000	85000	85000	85000	85000	85000	85000	
	2057874	2057874	2057874	2057874	2057874	2057874	2057874	2057874	
	164473	164473	920184	1385073	—			53000	
	117460	1548941	3259197	1709196	1718557	2103965	964808	1159582	
	85183	98008	1404408	1076060	1574791	2919021	859067	1268824	
	2057874	2057874	2057874	2057874	2057874	2738021	2738621	2057874	
	1016796	1721721	1016796	600377	1384433	1610723	2946857	2863457	
	100	—		200	1337704	200			
	393700	5890458	R 10769	9000	71167	11004	103780	103780	
					1484619	1718580	2050000	2496486	
	11955867 ✓	14380048 ✓	6690888 ✓	2840575 ✓	2678528	3046485	3314761	3714595	
	1153167	1154911	1185861	1187701	1194769	1205326	1413581	1512121	
	697479 ✓	5784095 ✓	3540985 ✓	2443517 ✓	1351078 ✓	3967987 ✓	2717426 ✓	2870419 ✓	
	4363	4491	3817	3933	3933	3933	3933	3933	

[fol. 82]

Comstock Exhibit 40.

New Orleans, Texas and Mexico Railway Company.

Capital Stock and Bonds of Subsidiaries Owned 100 Percent and Pledged Under First Mortgage Dated April 1, 1924.

	Date Acquired	Stock			Bonds	
		Number of Shares	Par Value	Book Value	Par Value	Book Value
The St. Louis, Brownsville and Mexico Ry. Co.	Mar. 1, 1910	5,000	$ 500,000	$ 500,000	$12,913,242	$12,913,242
The Beaumont, Sour Lake and Western Ry. Co.	Mar. 1, 1910	850	85,000	85,000	2,057,825	2,057,825
The Orange and Northwestern Railroad Co.	Mar. 1, 1910	70	35,000	35,000	1,066,947	1,066,947
New Iberia and Northern Railroad Co.	June 1, 1916	10,000	1,000,000	10	2,000,000)	961,694
Iberia, St. Mary and Eastern Railroad Co.	June 1, 1916	50	5,000	2	1,000,000)	
San Benito and Rio Grande Valley Ry. Co.	Mar. 1, 1916	700	70,000	10	963,735	95,273
Houston and Brazos Valley Ry. Co.	Feb. 1, 1924	4,220	422,000	350,006	1,000,000	1,000,000
San Antonio, Uvalde and Gulf Railroad Co.	Dec. 1, 1925	2,800	280,000	283,000	4,412,000	2,755,707
Asphalt Belt Railway Co.	Dec. 1, 1925	200	20,000	23,000	.....	.....
Sugar Land Railway Co.	Jan. 1, 1926	2,500	250,000	773,983	334,000	334,000
Asherton and Gulf Railway Co.	Jan. 1, 1926	750	75,000	239,739	200,000	200,000
Rio Grande City Railway Co.	Jan. 1, 1926	220	22,000	75,664	.....	.....
San Antonio Southern Ry. Co.	Jan. 1, 1927	2,500	250,000	596,729	.....	.....
Houston North Shore Ry. Co.	May 1, 1927	1,000	100,000	1,039,999	850,000	850,000

Office of Chief Acctg. & Fin. Officer,
St. Louis, Mo., January 10, 1944.

[fol. 83]

Comstock Exhibit 41.

New Orleans, Texas and Mexico Railway Co.

Statement of Source of Income or *Deficit—Years 1925 to 1932 Inclusive.

(Based on information obtained from Annual Reports filed with Interstate Commerce Commission.)

Year	Net railway operating income	Other income				Miscellaneous deductions	Interest on unfunded debt	Net income before interest on funded debt	Interest on funded debt	Net income after fixed charges
		Dividends	Interest	Other	Total other income					
1925	$1,222,570	$	$ 962,686	$150,677	$ 1,113,363	$100,516	$ 25,631	$ 2,590,784	$ 1,462,428	$ 827,285
1926	1,033,908	785,987	1,220,924	67,622	2,053,534	9,745	726	3,076,971	1,692,764	1,333,597
1927	801,833	978,753	1,542,377	22,103	2,573,133	10,347	22,732	3,334,887	1,924,926	909,961
1928	921,700	968,339	1,481,477	14,633	2,049,439	9,953	28,423	2,931,755	2,194,410	737,345
1929	1,022,443	1,039,970	1,401,394	11,675	2,453,039	10,069	1,225	3,463,548	2,314,353	1,149,196
1930	999,644	932,887	1,367,088	14,911	2,314,894	12,634	59,647	3,242,307	2,396,451	845,756
1931	563,546	4,155,079	1,235,025	11,139	5,401,243	14,346	6,596	6,046,327	2,493,263	3,543,525
1932	408,197	.....	1,318,428	20,140	1,338,578	12,105	198	1,732,477	2,624,666	*968,189
Total	$6,513,841	$8,492,015	$10,598,307	$308,901	$19,396,223	$196,784	$153,904	$26,639,288	$17,169,269	$9,469,127

* Denotes red in original.

[fol. 84] Comstock Exhibit 42.

Excerpts From:

Classification
of
Income, Profit And Loss, And
General Balance Sheet Accounts
for
Steam Roads
Prescribed by the
Interstate Commerce Commission
In Accordance with Section 20 of the
Act to Regulate Commerce

Issue of 1914

Effective on July 1, 1914

Account 513. Dividend Income.

This account shall include dividends declared on railway and other stocks, the income from which is the property of the accounting company, whether such stocks are owned by the accounting company and held in its treasury or deposited in trust, or are controlled through lease or otherwise.

Dividends declared shall not be credited prior to actual collection unless their payment is reasonably assured by past experience, guaranty, anticipated provision, or otherwise.

Accruals of guaranteed dividends may be included in this account if their payment is reasonably assured.

Note A.—This account shall not include credits for dividends on stocks issued or assumed by the accounting company and owned by it, whether pledged as collateral or held in its treasury, in special deposits, or in sinking or other reserve funds.

Note B.—Dividends on stocks of other companies held in sinking or other reserve funds shall be credited to account No. 516, "Income from sinking and other reserve funds".

Account 727. Other Unadjusted Debits.

This account shall include the amount of debit balances in suspense accounts that can not be entirely cleared and disposed of until additional information is received, such as freight claims paid when found to be correct, but in advance of investigation with other carriers; interest paid in advance; debit balances in clearing accounts, such as "Shop expenses", "Store expenses", "Operations of gravel pits", and "Operations of quarries"; items credited to Operating Revenues or Operating Expenses on an estimated basis in accordance with general instructions for the classification of operating revenues and operating expenses, section 2; unextinguished discount on short-term notes; estimated accrued depreciation on equipment leased (see general instructions, section 2); unadjusted debit items not provided for in accounts Nos. 724, 725, and 726, and other similar items.

[fol. 85]

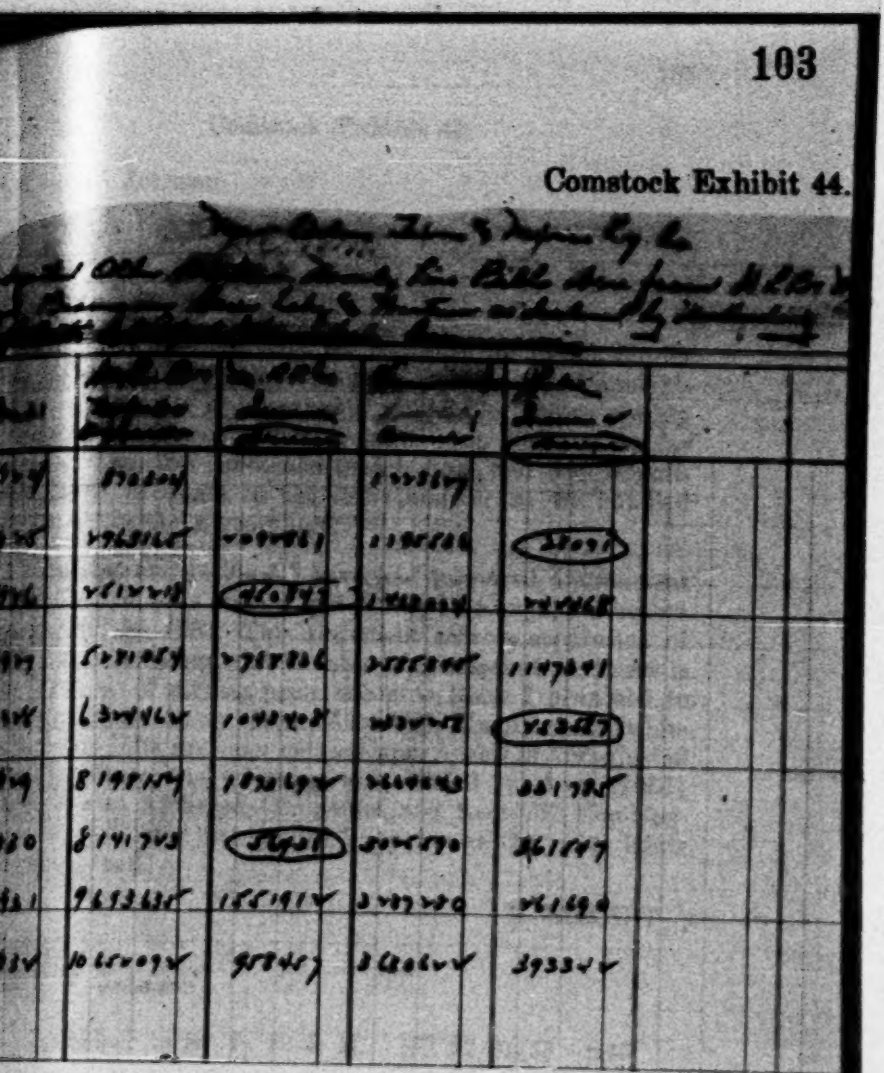
Comstock Exhibit 43.

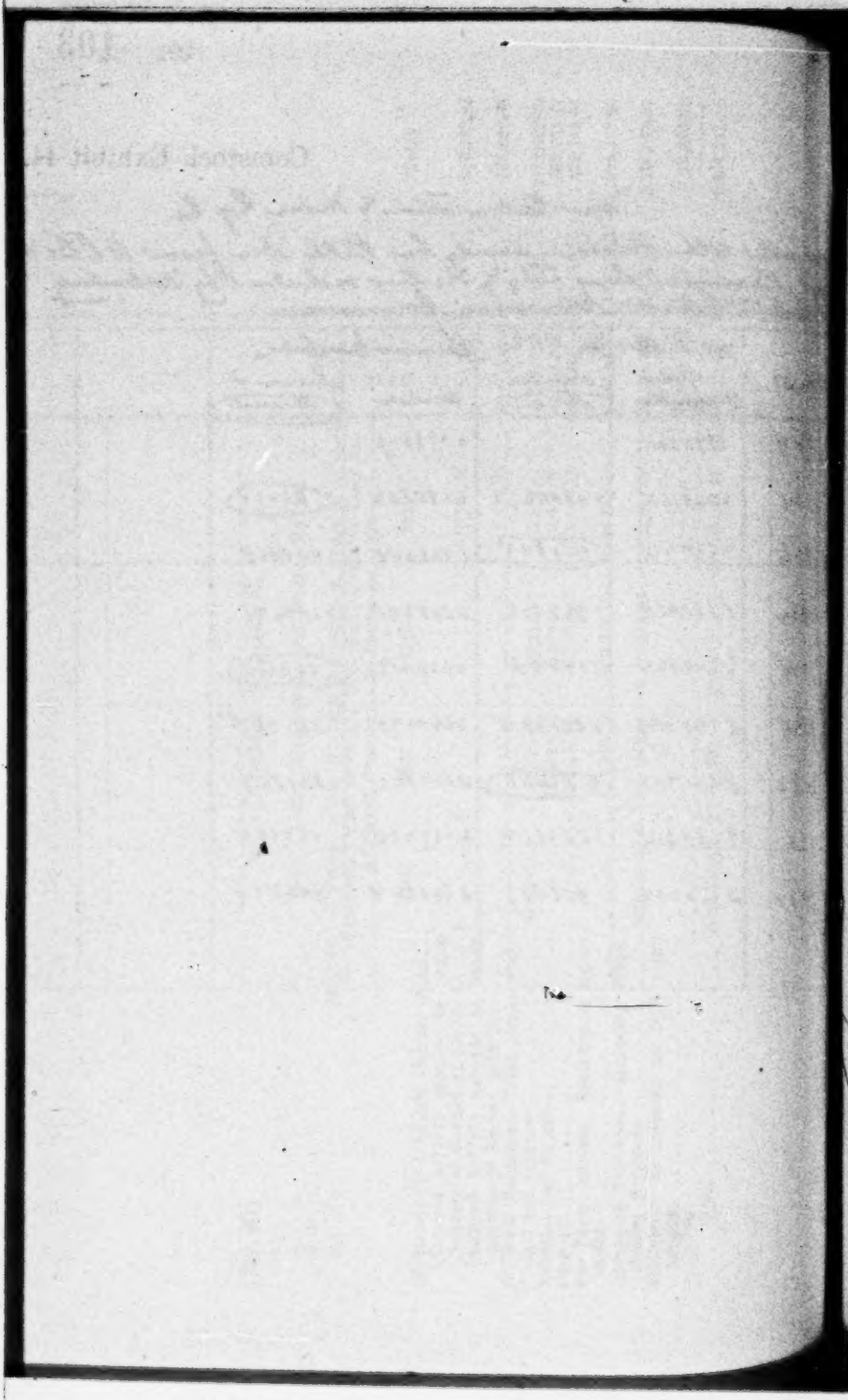
The St. Louis, Brownsville and Mexico Ry. Co.

Analysis of Amounts Due NOT&M Transferred From a/c 778—Other Unadjusted Credits to a/c 757—Non-negotiable Debt to Affiliated Companies in December, 1932.

	1926	1929	1930	1931	1932	1933	Total
Dividends on StLB&M Capital Stock:							
Declared 6/17/31 payable to Stockholders of Record 11/30/30	$	$	$	$ 316,158.85	$	$	$ 316,158.85
Declared 6/17/31 payable to Stockholders of Record 2/28/31	.....	.....	.....	238,290.38	.....	.....	238,290.38
StLB&M Equipment Trust Notes—Principal and Interest	150,800.00	99,735.00	246,215.00	228,330.00	274,225.00	63,373.75	1,072,658.75
Material and Supplies	.....	143,642.44	251,706.41	43,047.35	29,207.87	.....	467,703.47
Fuel Oil	.....	399,887.55	443,451.48	215,604.23	214,038.67	58,268.55	1,232,150.47
Per Diem, Mileage, Reclaims & Equip. Rents	.....	344,269.73	495,271.48	289,182.84	267,726.72	72,337.83	1,468,497.80
Operating Expenses—Including Propn. Pooled Expenses	284,530.48	1,080,266.75	1,539,568.87	1,321,427.33	995,468.31	255,972.23	5,596,574.97
Settlement of Interest on I-GN Open Account	.....	.....	.....	.....	75,856.71	.....	75,856.71
Total	$435,330.48	$1,967,791.47	$3,037,112.75	$2,982,641.97	$1,857,461.98	$450,952.36	$10,824,291.10

Comstock Exhibit 44.





[fol. 87] Comstock Exhibit 45.

OK—F. P. Johnson

Houston January 18, 1934
21C

Mr. F. P. Johnson

In order to do away with the necessity for listing family line bills and family line vouchers each time and analysis of these accounts is prepared I would like before closing December 1933 accounts to transfer such items in so far as prior items are concerned to Advances and Non Negotiable Debit accounts in the same manner as we handled similar items some years ago.

With this end in view I have had prepared a statement of family line bills unpaid and family line unpaid vouchers as of Nov. 30, 1933. This statement reflects separation of bills between prior and Trustee accounts but as there is *no prospect* of paying prior accounts items I proposed to transfer such items from Acct 727 Unadjusted Debits where the bills are now carried and Acct 778 Unadjusted Credits where the vouchers are carried to Acct (706d) Advances to Affiliated Companies and Acct 757 Non-Neg-Debt to Affiliated Companies in so far as the prior items are concerned.

M. ECKERT

Signed
OK F. P. Johnson

Attached to St. L. B. & M. JE 12/31/33 #43
(Prior Acct)

[fol. 88]

Comstock Exhibit 46.

St. Louis, Brownsville and Mexico Ry. Co.

Schedule of Dividends Declared and Reported Paid During Period 1/1/24 to 12/31/32 (as Shown in Annual Reports to I. C. C.) (Schedule 300 D)

Name of Security	Rate of %	Par Value	Dividend Amount	Date Declared	Date Payable
Common Stock	131.+	499,100	654,911.40	4/29/24	4/29/24
Common Stock	20.00000	500,000	100,000	2/12/26	2/12/26
	44.543864	500,000	222,719.32	3/30/26	3/30/26
	8.268196	500,000	41,344.58	8/17/26	8/17/26
	36.123440	500,000	180,617.20	12/29/26	12/29/26
	47.861358	500,000	239,306.79	12/29/26	12/29/26
			783,987.89		
Common Stock	1.306378	500,000	6,531.89	6/22/27	6/22/27
	194.044328	500,000	970,221.64	12/17/27	12/17/27
			976,753.53		
Common Stock	38.530076	500,000	192,650.38	1/25/28	1/25/28
	82.092426	500,000	410,462.13	10/30/28	10/30/28
			603,112.51		
Common Stock	45.899490	500,000	229,497.46	1/19/29	1/19/29
	55.549234	500,000	277,746.17	6/15/29	6/15/29
	106.545440	500,000	532,727.20	10/24/29	10/24/29
			1,039,970.83		
Common Stock	74.15	500,000	370,738.63	6/19/30	6/19/30
	112.03	500,000	560,159.36	12/ 6/30	12/ 6/30
			930,897.99		
Common Stock	63.24	500,000	316,188.85	6/17/31	6/17/31
	67.78	500,000	338,890.88	6/17/31	6/17/31
	700.00	500,000	3,500,000.00	6/30/31	6/30/31
			4,155,079.73		

Note: The following statement appears at the foot of Schedule 300 D each year:

"No obligation has been incurred for the purpose of procuring funds for payment of dividend or for replenishing [treasurey] of respondent after payment of dividend."

Note: Computation of Total Dividends reported paid during period 11/1/25 to 12/31/32 was 8,489,802.48. This total does not appear in the reports filed with I. C. C.

[fol. 89] Comstock Exhibit 47.

1932 D. C. 9029
NOT&M Ry. Co.
Houston Branch
Office

Exception No. 19

Advances to or from affiliated companies, and items subject to current settlement with such companies, classified as unadjusted debits or credits instead of as investments in affiliated companies, nonnegotiable debt to affiliated companies, or miscellaneous accounts receivable or payable, as appropriate.

(a) The amounts of all bills rendered by the carrier against the several affiliated Missouri Pacific lines having headquarters in Houston, Texas, except the Brownsville and Matamoros Bridge Company, are debited to an account styled "Family Lines Bills", classified under account 727, "Other unadjusted debits". The balance of $15,640,056.89 in that account as of December 31, 1932, contained large amounts representing an accumulation of bills rendered against some of the affiliated lines during periods of from two to six years. Therefore, it is evident that to a large extent such bills were not subject to current settlement. Bills against certain other system companies, also reflected in the balance in that account covered charges customarily settled on what amounts to a current basis.

Items due from affiliated companies which are subject to current settlement should be debited to account 715, "Miscellaneous accounts receivable", while those permitted to remain outstanding indefinitely should be stated in account 706, "Investments in affiliated companies", in accordance with the texts of those accounts.

(b) Audited bills received from the affiliated lines mentioned in section (a) are immediately covered by non-bankable vouchers, the amounts thereof being credited to an account styled "Family Lines Vouchers", classified

under account 778, "Other unadjusted credits", which account reflected a balance of $78,394.45 as of December 31, 1932. It was noted that in most instances such amounts were cleared by cash transfers within one or two months from date of voucher. In such cases the amounts of vouchers should be considered as current liabilities and credited to account 761, "Miscellaneous accounts payable", in accordance with the text of that account. However, any amounts vouchered which are not subject to current settlement should be credited to account 757, "Nonnegotiable debt to affiliated companies", in accordance with the provisions of that account.

The practices referred to in sections (a) and (b) of this exception should be corrected and the accounts adjusted in harmony therewith, and two copies of the adjusting entry submitted to this bureau, giving journal entry reference, ledger folio and the month in which entered.

. . . . . .

[fol. 90] Comstock Exhibit 48.

Extract From Letter Dated February 12, 1934, Addressed to Mr. Lewis F. Ormond, Examiner, Bureau of Accounts, Interstate Commerce Commission, Houston, Texas.

Exception No.	File Reference	Carrier
8	DC 9024	The Beaumont, Sour Lake & Western Ry. Co.
10	DC 9028	New Iberia & Northern RR Co.
19	DC 9029	New Orleans, Texas & Mexico Ry. Co.
8	DC 9030	The Orange & Northwestern RR Co.
11	DC 9032	The St. Louis, Brownsville and Mexico Ry. Co.
11	DC 9035	San Antonio, Uvalde & Gulf RR Co.

Exception: Advances to or from affiliated companies, and items subject to current settlement with such companies, classified as unadjusted debits or credits instead of as investments in affiliated companies, non-negotiable debt to affiliated companies, or miscellaneous accounts receivable or payable as appropriate.

We assent to this exception and adjustments have been made in December, 1933 accounts by transferring family line vouchers having liability prior to April 1, 1933 from Account 778, "Unadjusted Credits," to Account 757b, "Non-Negotiable Debt to Affiliated Companies"; and by changing the ledger heading on such balances subsequent to April 1, 1933 from Account 778, "Unadjusted Credits," to Account 761, "Miscellaneous Accounts Payable," they being considered subject to current settlement. Also, adjustments have been made in December, 1933 accounts by transferring family line bills unpaid as of April 1, 1933 from Account 727, "Unadjusted Debits," to Account 706d, "Advances to Affiliated Companies"; and by changing the ledger heading on such balances subsequent to April 1, 1933 from Account 727, "Unadjusted Debits," to Account 715, "Miscellaneous Accounts Receivable." Two copies of journal entries making the transfer of family line bills and vouchers to "Investment in Affiliated Companies" and "Non-Negotiable Debt to Affiliated Companies" are attached hereto, as follows:

Carrier	Journal Entry Numbers
The Beaumont, Sour Lake & Western Ry. Co.	33 and 34
New Iberia & Northern RR Co.	36
New Orleans, Texas & Mexico Ry. Co.	56 and 55
The Orange & Northwestern RR Co.	35
The St. Louis, Brownsville and Mexico Ry. Co.	42 and 43
San Antonio, Uvalde & Gulf RR Co.	21 and 22

[fol. 91] Comstock Exhibit 49.

1932 D. C. 9032
StLB&M Ry. Co.
Houston Branch
Office

Exception No. 11

Advances to or from affiliated companies, and items subject to current settlement with such companies, classified as unadjusted debits or credits instead of as investments in affiliated companies, nonnegotiable debt to affiliated companies, or miscellaneous accounts receivable or payable, as appropriate.

(a) The amounts of all bills rendered by the carrier against the several affiliated Missouri Pacific lines having headquarters in Houston, Texas, except the Brownsville and Matamoros Bridge Company, are debited to an account styled "Family Lines Bills", classified under account 727, "Other unadjusted debits". The balance of $410,674.21 in that account as of December 31, 1932, contained large amounts representing an accumulation of bills rendered against some of the affiliated lines during periods of from two to ten years. Therefore, it is evident that to a large extent such bills were not subject to current settlement. Bills against certain other system companies, also reflected in the balance in the account, covered charges customarily settled on what amounts to a current basis.

Items due from affiliated companies which are subject to current settlement should be debited to account 715, "Miscellaneous accounts receivable", while those permitted to remain outstanding indefinitely should be stated in account 706, "Investments in affiliated companies", in accordance with the texts of those accounts.

(b) Audited bills received from the affiliated lines mentioned in section (a) are immediately covered by nonbankable vouchers, the amounts thereof being credited to an account styled "Family Lines Vouchers", classified under account 778, "Other unadjusted credits", which

account reflected a balance of $10,598,654.54 as of December 31, 1932. It was noted that amounts due some of the lines were cleared within one or two months by means of cash transfers but that the balance in the account also included large amounts which have been due other lines for several years.

Amounts due affiliated companies which are subject to current settlement should be credited to account 761, "Miscellaneous accounts payable", while those not subject to current settlement should be credited to account 757, "Nonnegotiable debt to affiliated companies", in accordance with the texts of those accounts.

The practices referred to in sections (a) and (b) of this exception should be corrected and the accounts adjusted in harmony therewith, and two copies of the adjusting entry submitted to this bureau, giving journal entry reference, ledger folio and the month in which entered.

* * * * * *

[fol. 92] Comstock Exhibit 50.

C-4

File 5-0

Houston, March 27, 1926.

Mr. H. R. Safford: Referring to your file 482-2 in regard to the matter of dividends on the capital stock of New Orleans, Texas & Mexico Railway Company which was paid on March 1st. It is again necessary that we take some action on behalf of our subsidiary companies with respect to declaring a dividend out of surplus of either The St. Louis, Brownsville & Mexico Ry. Co., or the Beaumont, Sour Lake & Western Ry. Co. for the purpose of taking care of the last dividend, as the income of the NOT&M Ry. Co. has been inadequate to pay out of its earnings the dividend which was declared by the Board of Directors.

Would you kindly have this matter placed before Mr. Cole in order that he may have suitable resolution prepared and passed on at the next meeting of the Board of Directors of the StLB&M Co. I will give him the amount which it will be necessary to provide from StLB&M funds.

(Not signed.)

cc–Mr. A. T. Cole.

(Notation:) E.S.B.–Pls. have prepared statement similar to one marked for Dec., Jany., and Feb.

(Signed) M. E. 3/27

[fol. 93] Comstock Exhibit 51.

C–11

Houston, Texas, March 29th, 1927.

File B–5–0

Mr. Eckert: Returning your file 5–0

The dividend requirement of 1-¾% on the N.O.T. & M.'s capital stock declared as of March 1st, 1927, was $259,575.75, compared with net income of the N.O.T. & M. for the three months ended February 28th of $253,043.86, as per statement attached, resulting in a deficit of $6,531.89, which I presume will have to be made up by a dividend on the capital stock of the St. L. B. & M. in favor of the N.O.T. & M.

(signed in ink) E. S. B.

[fol. 94] Comstock Exhibit 52.

C-5
A-S

Houston, July 2nd, 1926.

(Personnel)

Mr. A. T. Cole: Referring to your conference with Mr. Anderson, with reference to meeting of Board of Directors of the StLB&M Railway Company, whose stock is owned by NOT&M Railway Company, for the purpose of declaring dividend out of the earnings for the three months ending May 31st, 1926.

Following our past practice, it will be my desire to declare out of the StLB&M earnings, to extent of amount necessary to protect the dividend already declared and paid by the NOT&M, namely, $41,344.58.

You have scheduled adjourned annual meeting of Directors of the StLB&M for August, at which time this matter can be handled, and I would like for you to have our Legal Department prepare a resolution in proper form for presentation at that time.

(stamped:) (signed) H. R. SAFFORD

A

Cy-Mr. M. Eckert.

[fol. 95] Comstock Exhibit 53.

Minutes of Adjourned Annual Meeting of Board of Directors of The St. Louis, Brownsville and Mexico Railway Company Held at Houston, Texas, June 17, 1931

Be It Remembered: That on this, the 17th day of June, A. D. 1931, an adjourned annual meeting of the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, a corporation created and existing under the laws of the State of Texas, was held at the company's

office in Houston, Texas. At said meeting the following Directors of the Company, being a majority of all of the Company's Directors, and a quorum of said Board of Directors, were present, to-wit:

H. R. Safford
Frank Andrews
J. E. Anderson
W. G. Choate
A. B. Pierce

Mr. H. R. Safford, Vice President of the Company, presided as Chairman of the meeting and Mr. A. T. Cole, Secretary of the Company, acted as Secretary of the meeting.

The Chairman thereupon laid before the meeting a waiver of notice, time and service of notice for this Directors meeting, which had been signed by each of the Directors, and said waiver so signed, omitting signature and witness, is as follows:

"Know All Men By These Presents:

That I, the undersigned, a Director of The St. Louis, Brownsville and Mexico Railway Company, a corporation of the State of Texas, do, as such Director, hereby waive notice of the time, place and objects of the annual meeting of Directors of said Company to be held at the offices of said company at Kingsville, Texas, on the fifteenth day of June 1931.

And I hereby waive statutory requirements as to service and publication of notice of said annual meeting of Directors, and any adjournment or Adjournments thereof."

Upon motion duly made, seconded and unanimously carried, it was resolved that each of said waivers be filed with the Secretary of the Company, and that one copy thereof be entered at large upon the minutes of this meeting.

[fol. 96] On motion, duly made and seconded, it was resolved that minutes of the special meeting of the Board

of Directors held December 6, 1930 and annual meeting held June 15, 1931, be approved as read.

On motion, duly made and seconded, it was unanimously

Resolved that all acts of the Executive Committee, as shown by the minutes of the meetings of the Committee held December 18, 1930, January 22, 1931, April 14, 1931 and May 14, 1931, be, and they are hereby ratified, confirmed and adopted as the action of the Board.

The Chairman then stated that the election of Officers for the ensuing year was in order.

Mr. O. P. Van Sweringen was nominated for Chairman of the Board, and upon receiving the unanimous vote of all of the Directors present, was declared elected to the office of Chairman of the Board of Directors.

Mr. L. W. Baldwin was nominated for President, and upon receiving the unanimous vote of all of the Directors present, was declared elected President of the Company.

Mr. H. R. Safford was nominated and unanimously elected Vice President of this Company.

Mr. E. M. Durham, Jr. was nominated and unanimously elected Vice President of this Company.

Mr. F. P. Johnson was nominated and unanimously elected Vice President of this Company.

Mr. Herbert Fitzpatrick was nominated and unanimously elected Vice President, Law and Corporate Relations, of this Company.

Mr. William Wyer was nominated and unanimously elected Vice President of this Company.

Mr. R. J. Kleberg was nominated and unanimously elected Vice President of this Company.

Mr. A. T. Cole was nominated and unanimously elected Secretary of this Company.

Mr. William Wyer was nominated and unanimously elected Assistant Secretary of this Company.

[fol. 97] Mr. Edwin G. Wagner was nominated and unanimously elected Assistant Secretary of this Company.

Mr. C. W. Veitch was nominated and unanimously elected Assistant Secretary of this Company.

Mr. A. T. Cole was nominated and unanimously elected Treasurer of this Company.

Mr. William Wyer was nominated and unanimously elected Assistant Treasurer of this Company.

Mr. Edwin G. Wagner was nominated and unanimously elected Assistant Treasurer of this Company.

Mr. C. W. Veitch was nominated and unanimously elected Assistant Treasurer of this Company.

Mr. M. Eckert was nominated and unanimously elected Auditor of this Company.

Mr. Frank Andrews was nominated and unanimously elected General Solicitor of this Company.

Mr. E. H. Crenshaw, Jr. was nominated and unanimously elected General Attorney of this Company.

Mr. Frank Andrews nominated Mr. O. P. Van Sweringen, Mr. L. W. Baldwin and Mr. H. R. Safford to constitute the Executive Committee, who receiving the unanimous vote of the Directors present, were each and all of them declared duly elected.

The next business brought before the meeting was a resolution, authorizing the payment of a dividend on the capital stock of the Company to the Stockholders of record as of November 30, 1930. On motion of Director A. B. Pierce, seconded by Director J. E. Anderson, the following resolution was unanimously adopted:

Resolved, by the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, that a dividend of $316,188.85 be, and the same is hereby declared upon the stock of said Company, out of the surplus, payable immediately to stockholders of record as of November 30, 1930. This dividend is to make an adjustment of income and operating expenses between this line and New

Orleans, Texas & Mexico Railway Company, the owner of all of the capital stock of this Company.

[fol. 98] There was then laid before the meeting a resolution authorizing the payment of a dividend on the capital stock of the Company to Stockholders of record as of February 28, 1931. On motion of Director W. G. Choate, seconded by Director Frank Andrews, the following resolution was unanimously adopted:

Resolved, by the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, that a dividend of $338,890.88 be, and the same is hereby declared upon the stock of said Company, out of the surplus, payable immediately to Stockholders of record as of February 28, 1931. This dividend is to make an adjustment of income and operating expenses between this line and New Orleans, Texas & Mexico Railway Company, the owner of all of the capital stock of this Company.

The Chairman called the attention of the meeting to contracts entered into for a period of five years or more. Thereupon, on motion of Director J. E. Anderson, seconded by Director A. B. Pierce, the following resolution was adopted:

Be It Resolved That:

The action of the officers of this Company in executing and making the leases listed below is hereby ratified, approved and confirmed. Said leases are as follows:

Number	With Whom	Dated
0-5113	Piggly-Wiggly-Butt Co.	Nov. 18, 1930
0 5173	Jos. F. Byrnes	Dec. 29, 1930
0 5210	F. G. Jackson	Jan. 5, 1931

There being no further business, on motion, duly made and seconded, the meeting adjourned.

A. T. COLE
Secretary

[fol. 99] Comstock Exhibit 54.

Minutes of Special Meeting of Board of Directors of The St. Louis, Brownsville and Mexico Railway Company Held at Houston Texas, July 11, 1931

Be It Remembered: That on this the 11th day of July A. D. 1931, a special meeting of the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, a corporation created and existing under the laws of the State of Texas, was held at the company's office in Houston, Texas. At said meeting the following Directors of the Company, being a majority of all of the Company's Directors, and a quorum of said Board of Directors, were present, to wit:

H. R. Safford
J. E. Anderson
W. G. Choate
A. B. Pierce
C. M. Armstrong

Mr. H. R. Safford, Vice President of the Company, presided as Chairman of the meeting, and Mr. A. T. Cole, Secretary of the Company, acted as Secretary of the meeting.

The Chairman thereupon laid before the meeting a waiver of notice, time and service of notice for this Directors meeting, which had been signed by the Directors, and said waiver so signed, omitting signature and witness, is as follows:

"Know All Men by These Presents:

That I, the undersigned, a Director of The St. Louis, Brownsville and Mexico Railway Company, a corporation of the State of Texas, do, as such Director, hereby waive notice of the time, place and objects of a Special Meeting of the Board of Directors of said Company to be held in Houston, Texas, on Saturday, July 11, 1931, at nine O'clock in the forenoon.

And I hereby waive statutory requirements and all re-

quirements of By-Laws as to service and publication of notice of said Special Meeting of Directors, and of the objects and purposes of said meeting and consent that any business may be transacted at said meeting or at any adjournment or adjournments thereof, which may properly come before it."

Upon motion duly made, seconded and unanimously carried, it was resolved that each of said waivers be filed with the Secretary of the Company, and that one copy thereof be entered at large upon the minutes of this meeting.

[fol. 100] On motion, duly made and seconded, it was resolved the minutes of adjourned annual meeting of the Board of Directors held June 17, 1931, be approved as read.

The next business brought before the meeting was a resolution authorizing the payment of a dividend on the capital stock of the company to Stockholders of record as of June 30, 1931. On motion of Director C. M. Armstrong, seconded by Director A. B. Pierce, the following resolution was unanimously adopted.

Resolved, by the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, that a dividend of $3,500,000.00 be, and the same is, hereby declared upon the stock of said Company, out of the surplus, payable immediately to Stockholders of record as of June 30, 1931. This dividend is to make an adjustment of income and operating expenses between this line and New Orleans, Texas & Mexico Railway Company, the owner of all of the capital stock of this Company.

There being no further business, on motion duly made and seconded, the meeting adjourned.

A. T. COLE,
Secretary.

[fol. 101] Comstock Exhibit 55.

Houston, September 26, 1927

Mr. H. R. Safford: Your letter of August 4th, file 482

I attach hereto statement showing the NOT & M resul of operation for the months June, July and August, 192 from which you will observe that the deficit is $278,065.0 It will, therefore, require a total of $537,640.77 to cov the deficit and provide the September 1st dividend.

In this connection the St. LB & M dividend of $432,580. to cover the June 1st dividend on the NOT&M stock h not yet been declared.

I am sending Mr. Cole a copy of this letter for his i formation.

Enc.

cc Mr. A. T. Cole.

(Not signed)

[fol. 102] Comstock Exhibit 56.

Houston, July 7th, 1930

Mr. L. W. Baldwin: Referring to your letter of Apri 18th, concerning action taken by the Executive Committe of the New Orleans, Texas & Mexico Railway Company o April 15th.

The net income of the N. O. T. & M. for the three month ending May 31st, 1930, amounted to $81,007.05, o $178,568.70 short of the June 1st dividend requirement o $259,575.75.

In this connection am attaching hereto statement show ing results of operation for the months of March, April and May, 1930.

We will arrange for Mr. Cole to list for action at the

next meeting of the Board of Directors of the St. Louis, Brownsville & Mexico Railway Company a resolution providing that dividend for the sum of $178,568.70 be declared out of surplus of the St. L. B. & M. in favor of the N. O. T. & M.

(Stamped) H. R. SAFFORD.
L.

BCC to Messrs:

M. Eckert: Your file 5-0.

A. T. Cole: Won't you please arrange accordingly.

H. R. S.

[fol. 103] Comstock Exhibit 57.

Excerpt from Minutes of Adjourned Annual Meeting of Board of Directors of The St. Louis, Brownsville and Mexico Railway Company held June 19, 1930.

The next business brought before the meeting was a resolution, authorizing the payment of a dividend on the capital stock of the Company to the Stockholders of record as of November 30, 1929. On motion of Director W. G. Choate, seconded by Director A. B. Pierce, the following resolution was unanimously adopted:

Resolved, by the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, that a dividend of $131,075.01 be, and the same is hereby declared upon the stock of said Company, out of the surplus, payable immediately to stockholders of record as of November 30, 1929. This dividend is to make an adjustment of income and operating expenses between this line and New Orleans, Texas & Mexico Railway Company, the owner of all of the capital stock of this Company.

[fol. 104] Comstock Exhibit 58.

Excerpt from Minutes of Adjourned Annual Meeting of Board of Directors of The St. Louis, Brownsville and Mexico Railway Company held June 19, 1930.

There was then laid before the meeting a resolution authorizing the payment of a dividend on the capital stock of the company to stockholders of record as of February 28, 1930. On motion of Director Frank Andrews, seconded by Director J. E. Anderson, the following resolution was unanimously adopted.

Resolved, by the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, that a dividend of $239,663.62 be, and the same is hereby declared upon the stock of said Company, out of the surplus, payable immediately to Stockholders of record as of February 28, 1930. This dividend is to make an adjustment of income and operating expenses between this line and New Orleans, Texas & Mexico Railway Company, the owner of all of the capital stock of this company.

[fol. 105] Comstock Exhibit 59.

Excerpt from Minutes of Adjourned Special Meeting of Board of Directors of The St. Louis, Brownsville and Mexico Railway Company held December 6, 1930.

The next business brought before the meeting was a resolution, authorizing the payment of a dividend on the capital stock of the company to Stockholders of Record as of May 31, 1930. On motion of Director A. B. Pierce, seconded by Director Frank Andrews, the following resolution was unanimously adopted:

Resolved, by the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, that a dividend of $178,568.70 be, and the same is, hereby declared upon the stock of said Company, out of the surplus, payable immediately to Stockholders of Record as of May 31, 1930. This dividend is to make an adjustment of income and operating expenses between this line and New Orleans, Texas & Mexico Railway Company, the owner of all of the capital stock of this company.

[fol. 106] Comstock Exhibit 60.

Excerpt from Minutes of Adjourned Special Meeting of Board of Directors of The St. Louis, Brownsville and Mexico Railway Company held December 6, 1930.

There was then laid before the meeting a resolution authorizing the payment of a dividend on the capital stock of the Company to Stockholders of Record as of August 31, 1930. On motion of Director W. G. Choate, seconded by Director J. E. Anderson, the following resolution was unanimously adopted:

Resolved, by the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, that a dividend of $381,590.66 be, and the same is hereby declared upon the stock of said Company, out of the surplus, payable immediately to Stockholders of Record as of August 31, 1930. This dividend is to make an adjustment of income and operating expenses between this line and New Orleans, Texas & Mexico Railway Company, the owner of all of the capital stock of this Company.

[fol. 107] Comstock Exhibit 61.

Houston, Jan. 9th, 1926.

Mr. L. W. Baldwin: The minutes of meeting of the Board of Directors of New Orleans, Texas & Mexico Railway Company held in New York October 27th, 1925, state that the Chairman reported that the estimated earnings of the Company for the three months ending November 30, 1925, would be in excess of the rate of 7% per annum on the capital stock of the Company and recommended the declaration of the quarterly dividend payable December 1, 1925, which was done.

The dividend requirement on New Orleans, Texas & Mexico Railway Co. capital stock was $259,575.75, based upon 1¾% on 148,329 shares outstanding. So long as we declare this dividend out of net income of New Orleans, Texas & Mexico Railway Co. it is necessary that New Orleans, Texas & Mexico Railway Co. itself earn a sufficient amount to warrant paying it.

The actual results of that line for the three mont period ending with November 30, 1925, aggregated on $172,053.55, or 1.147% and fell short by the sum $87,522.20 of the amount of dividend which has been d clared and paid.

Mr. Andrews to whom I have referred this matter, co curs in my views that meetings of the Board of Directo of The Beaumont, Sour Lake & Western Railway Co. an The St. Louis, Brownsville & Mexico Railway Co. shou be held and dividend declared out of the earnings of tho companies for the current year, or so much thereof as ma be necessary to protect the dividend already declared an paid by New Orleans, Texas & Mexico Railway Co.

Will you kindly advise if you desire meeting of th Boards of Directors of the two Texas companies mentione called for the purpose of taking such action as may b necessary in the premises.

(Signed) H. R. SAFFORD

(Pencil notation): O. K. F. P. Johnson

[fol. 108] Comstock Exhibit 62.

St. Louis, January 14th, 1926.

1-340

Mr. H. R. Safford: Your letter January 9th relativ quarterly dividend NOT & M Ry., payable December 1s 1925.

Under the circumstances, there is nothing else to do bu have Board meetings of the Beaumont, Sour Lake & Western Ry., and St. Louis, Brownsville & Mexico Ry., so they may declare dividend out of their earnings for the current year or so much thereof as may be necessary to protect the dividend already declared and paid by the N. O. T. & M.

(Stamped) (Signed) L. W. BALDWIN

[fol. 109] Comstock Exhibit 63.

Houston, October 7, 1926.

Mr. L. W. Baldwin: I attach a statement showing the net result of operation of New Orleans, Texas & Mexico Railway Company during the months of June, July, and August 1926, which you will note shows net income of $78,958.55, or $180,617.20 short of the amount required to pay the 1¾% dividend declared on the outstanding capital stock of the company paid as of September 1st.

It will, therefore, be necessary to again declare dividends on the Texas subsidiaries in favor of New Orleans, Texas & Mexico Railway Company to this extent.

Unless otherwise advised we will take the same action in arranging meeting of the Board of Directors of The St. Louis, Brownsville & Mexico Ry. Co., to declare a dividend sufficient in amount to protect the dividend on the NOT&M stock.

(Signed) H. R. SAFFORD.

(Ink notation:) Mr. Johnson Is this alright. W. G. V. 10/11

(Pencil notation:) Yes. F. P. Johnson. 10/12/26

[fol. 110] Comstock Exhibit 64.

Saint Louis, October 14, 1926.

Mr. H. R. Safford: Referring to your letter October 7th, regarding quarterly dividend NOT&M.

It will be satisfactory to arrange for Board meeting of the StLB&M to declare a dividend out of their earnings to protect the dividend on the NOT&M stock.

(Stamped:) (Signed) L. W. BALDWIN

Per W. G. V.

[fol. 111] Comstock Exhibit 65.

Houston, Dec. 10th, 1926.

Mr. L. W. Baldwin: Referring to your letter November 8th, quoting resolution of the NOT&M Executive Committee held in New York November 4th with reference to dividend on the NOT&M stock for the three months ending November 30th, 1926.

From present indications the net deficit of the NOT&M for the above period will aggregate approximately $21,000 which will make it necessary, in addition to the dividend requirement of $259,575.75 as of December 1st, to again declare dividends on the Texas subsidiaries in favor of the NOT&M Railway Company, to the extent of approximately $281,000.

Unless advised to the contrary, we will take the same action in arranging meeting of the Board of Directors of the StLB&M Railway Company to declare a dividend sufficient to protect the above amount.

(Signed) H. R. SAFFORD.

(Ink notation:) Mr. Johnson. Is this alright. W. G. V. 12/14

(Pencil notation:) 700,627.20—10 mos. This is O. K. F. P. J.

[fol. 112] Comstock Exhibit 66.

Saint Louis, December 23, 1926.

Mr. H. R. Safford: Referring to your letter December 10th, file 482-2, regarding quarterly dividend NOT&M:

It will be satisfactory to arrange meeting of Board of Directors of St. L. B. & M. Railway Company to declare a dividend out of their earnings to protect the dividend on the N. O. T. & M. stock.

(Stamped:) (Signed) L. W. BALDWIN
Per C. D. H.

[fol. 113] Comstock Exhibit 67.

(Pencil notation:) Mr. Johnson To note. W. G. V. 1/5/27. Noted F. P. Johnson.

B–S

Houston, January 1st, 1927.

Mr. L. W. Baldwin: I attach statement showing net results of N.O.T. & M. Railway Company during months September, October, and November, 1926, which you will note shows net income $20,268.96, or $239,306.79 short of the amount required to pay the one and three-quarter dividend declared on outstanding Capital Stock of the company payable as of December 1st.

It was therefore necessary to again declare dividends on the Texas subsidiaries in favor of N.O.T. & M., which was accomplished at meeting December 29th.

(Signed) H. R. SAFFORD.

[fol. 114] Comstock Exhibit 68.

(Pencil notation): Mr. Johnson, Is this O. K. W. G. V. 6/11

E–S

Houston, June 8th, 1927.

Mr. L. W. Baldwin: Referring to your letter of April 29th, advising that resolution was adopted at meeting of the Board of Directors held in New York, April 26th, providing for payment of a dividend of 1-¾% on outstanding stock of the New Orleans, Texas & Mexico for the three months ending May 31st, 1927, payable June 1st, 1927 to stockholders of record as of May 14th, 1927.

For the months of March and April the N.O.T. & M. sustained a net deficit of $67,369.25, while an estimate for the month of May indicates a deficit of possibly $86,000.00 which will make it necessary to declare a dividend on the Texas subsidiaries in favor of the N. O. T. & M. Railway Company. Unless advised to the contrary, we will take the same action in arranging meeting of the Board of Directors of the St. L. B. & M. to declare dividend sufficient to protect the amount required.

As soon as available, I will forward statement showing net results of operation of the New Orleans, Texas & Mexico Railway Company, months of March, April and May 1927.

(Signed) H. R. SAFFORD.

Cy–Mr. F. P. Johnson

[fol. 115] Comstock Exhibit 69.

Saint Louis, June 14, 1927.

Mr. H. R. Safford: Referring to your letter June 8th, file 482-2, regarding quarterly dividend N. O. T. & M.

It will be satisfactory to arrange meeting of the Board of Directors of the St. L. B. & M. to declare dividend out of their earnings to protect the dividend on the N. O. T. & M. stock.

(Stamped) (Signed) L. W. BALDWIN,
per W. G. V.

cc–Mr. F. P. Johnson

[fol. 116] Comstock Exhibit 70.

(Pencil notation): Mr. Johnson To Note C. D. H. 7/5

E–S

Houston, July 2nd, 1927

Mr. L. W. Baldwin: Referring further to my letter of June 8th, in connection with matter of payment of a dividend of 1 ¾% on outstanding stock of the New Orleans, Texas & Mexico Railway Company for the three months ending May 31st, 1927.

I am enclosing herewith statement showing results of operation for the months of March, April and May, which indicates that the N. O. T. & M. sustained a net deficit of $173,005.12.

(Signed) H. R. SAFFORD

cc: Mr. F. P. Johnson

[fol. 117] Comstock Exhibit 71.

Houston, January 3rd, 1928

Mr. L. W. Baldwin: Your letter of November 5th:

I am enclosing herewith statement showing the results of operation of New Orleans, Texas & Mexico Railway Company for the months of September, October and November, 1927, which indicates that the net income for that period is short $192,650.38 of meeting the dividend on the stock of the NOT&M.

In order to provide for this dividend requirement the StLB&M should declare a dividend on its capital stock in favor of the NOT&M for the amount of this difference in order that this amount may be set up as income to the NOT&M in the year 1927.

(Signed) H. R. SAFFORD.

(Pencil notation): Mr. Johnson, Is this O. K.
W. G. V. 1/6/28. Mr. Vollmer.
Yes. F. P. Johnson

cc: Mr. F. P. Johnson

[fol. 118] Comstock Exhibit 72.

Saint Louis, January 9, 1928

Mr. H. R. Safford: Referring to your letter January 3rd, file 482-2.

It will be satisfactory to arrange meeting of Board of Directors of the St. L. B. & M. to declare dividend on its capital stock in favor of the N.O.T. & M. in order to protect the N.O.T. & M. dividend.

(Stamped) (Signed) L. W. BALDWIN,
Per W. G. V.

[fol. 119] Comstock Exhibit 73.

(Pencil notation:) Mr. Johnson? W. G. V. 7/3

Houston, June 29th, 1928.

Mr. L. W. Baldwin: Your letter of May 8th, relative to payment of dividend of 1 ¾% on outstanding capital stock of the NOT&M Railway Company for the three months ended May 31st, 1928.

I now attach a statement showing the income account of the NOT&M Ry. Co. by months for the three months, indicating a total net income of $127,924.97, which is $131,650.78 short of the quarterly dividend requirement of $259,575.75. A dividend should be declared by the subsidiary companies to increase the NOT&M net income for that period to the amount of the dividend requirement equivalent to 1¾% on the outstanding capital stock of the NOT&M Ry. Co.

(Signed) H. R. SAFFORD.

cc: Mr. F. P. Johnson

(Pencil notation:) Mr. Vollmer: This is correct—
The StLB&M Ry. Co. Net Income, same period was $308,928.32. F. P. Johnson.

[fol. 120] Comstock Exhibit 74.

Houston, Texas, September 27th, 1928.

(Pencil notation:) Mr. Johnson—Is this O. K. W. G. V. 10/2

O. K. F. P. Johnson.

Mr. L. W. Baldwin: Your letter of August 8th, relative to payment of dividend of 1-¾% on outstanding capital stock of the NOT&M Railway Company for the three months ended August 31st, 1928.

I now attach a statement showing the income account of the NOT&M Ry. Co., by months, for the three months, indicating a net deficit of $19,235.00 or an amount of $278,811.35 short of the dividend requirement of 1-¾% on the capital stock of the company for that quarter.

Dividends should, therefore, be declared by the subsidiary lines in favor of the NOT&M for that amount.

(Signed) H. R. SAFFORD.

cc–Mr. F. P. Johnson

[fol. 121] Comstock Exhibit 75.

St. Louis, October 8, 1928.

Mr. H. R. Safford: Referring to your letter September 27th, file 482-2 regarding quarterly dividend on capital stock of the NOT&M Railway Company.

It will be satisfactory to arrange meeting of the Board of Directors of subsidiary lines and declare dividend out of their earnings to protect the dividend on the NOT&M stock.

(Stamped:) (Signed) L. W. BALDWIN,
Per E. F. B., JR.

10

(Pencil Notation:) O. K. F.P.J.

[fol. 122] Comstock Exhibit 76.

Houston, Texas, January 7, 1929

(Pencil notation:) Mr. Johnson, Is this O. K. W.G.V. 1/10.

Mr. L. W. Baldwin: Your letter of October 29th, with reference to payment of dividend of 1¾% on outstanding stock of the New Orleans, Texas & Mexico Railway Company for the three months ending November 30th, 1928, payable December 1, 1928, to Stockholders on record as of November 15th, 1928.

I am now attaching statement showing that the net income of the NOT&M Railway Company for the three months ending November 30th, 1928, was $30,078.29, or $229,497.46 short of the December 1st dividend requirements of 1¾% on the capital stock of the company.

Dividends should, therefore, be declared by the subsidiary lines in favor of the NOT&M for that amount.

(Signed) H. R. SAFFORD.

cc-Mr. F. P. Johnson.

(Ink notation:) Mr. W. G. Vollmer, This is correct. F.P.J. 1/11/29.

[fol. 123] Comstock Exhibit 77.

January 12, 1929

Mr. H. R. Safford: Referring to your letter of January 7th, file 482-2.

It will be satisfactory to arrange meeting of the Board of Directors of subsidiary lines and declare dividends out of their earnings to protect the dividend on the N.O.T. & M. stock.

Copy to Mr. F. P. Johnson.

(Stamped) (Signed) L. W. BALDWIN
Per E. F. B., JR.

[fol. 124] Comstock Exhibit 78.

Houston, March 26th, 1929

Mr. L. W. Baldwin: Your letter of January 23rd in regard to payment of 1¾% on outstanding stock of the N.O.T.&M., for the three months ending February 28th 1929, payable March 1st, 1929, to stockholders of record as of February 15th, 1929:

I am attaching hereto statement showing that the net income of the N.O.T. & M. for the three months ending February 28th, 1929, is $277,746.17 short of dividend requirement as of March 1st, which aggregates $259,575.75 per quarter. Dividends should, therefore, be declared by the subsidiary lines in favor of the N.O.T. & M. to make up this deficit.

(Signed) H. R. SAFFORD

CC to Mr. F. P. Johnson

(Pencil notation): No enclosures.

[fol. 125] Comstock Exhibit 79.

St. Louis, January 6, 1929

Mr. Safford: Referring to your letter of December 31, file 482-2.

It will be satisfactory for dividend to be declared by subsidiary lines in favor of the New Orleans, Texas and Mexico Railroad Company to make up deficit resulting from payment of N.O.T. & M. dividend of 1¾% for the three months ended November 30, 1929, and you may arrange accordingly.

(Signed) L. W. BALDWIN,
Per C. D. P.

[fol. 126] Comstock Exhibit 80.

Houston, January 10th, 1931

Mr. L. W. Baldwin: The net income of the NOT&M for the three months ending November 30th, 1930, reflects a deficit of $56,613.10, which is $316,188.85 short of quarterly dividend requirement of the NOT&M due December 1st, 1930.

I am attaching hereto statement showing result of operations for the months of September, October, and November 1930.

Following past practice, we will arrange for Mr. Cole to list for action at the next meeting of the Board of Directors of the StLB&M, a resolution providing that dividend be declared out of the surplus of the StLB&M in favor of the NOT&M.

(Stamped) H. R. SAFFORD.
F.

Bcc to Messrs:

M. Eckert: Your letter January 5th, file 5-0

A. T. Cole: Won't you please arrange in line with the above. (signed on typewriter) H. R. S.

[fol. 127] Comstock Exhibit 81.

St. Louis, Mo., January 13, 1931

Mr. Safford: Referring to your letter of January 10th, file 482-2, with reference to declaring dividend out of the surplus of the St. Louis, Brownsville & Mexico Railway Company in favor of the New Orleans, Texas & Mexico Railway Company.

It will be satisfactory to handle this in line with your letter.

(Stamped) (Signed) L. W. BALDWIN,
Per C. D. P.

[fol. 128] Comstock Exhibit 82.

Houston, Texas, April 4th, 1931.

(Pencil notations): Mr. Johnson, Any comments? L.W.B. 4/7. No comments, F. P. Johnson.

Mr. L. W. Baldwin: The net income of the NOT&M for the three months ending February 28th, 1931, reflects a deficit of $79,315.13, which is $338,890.88 short of quarterly dividend requirement of the NOT&M of $259,575.75.

I am attaching hereto statement showing result of operations for the months of December 1930, and January and February 1931.

Following past practice, we will arrange for Mr. Cole to list for action at the next meeting of the Board of Directors of the StLB&M, a resolution providing that dividend be declared out of the surplus of the StLB&M in favor of the NOT&M.

(Signed) H. R. SAFFORD.

[fol. 129] Comstock Exhibit 83.

At New York, April 16th, 1931

Mr. Safford: I want to impress upon you again the fact that although it may necessitate a much more drastic curtailment of expense than you have ever had or anticipated, the NOT&M must earn and pay its dividend this year and have $100,000. left in addition.

In this connection I want further to impress you with the necessity of curtailing expenditures chargeable to Additions & Betterments and only submit or authorize such items that cannot possibly be deferred.

(signed in pencil) L. W. BALDWIN

[fol. 130] Comstock Exhibit 84.

Houston, April 28th, 1931

Mr. Baldwin: Replying to your letter of April 16th written at New York setting a goal for Gulf Coast Lines net income for the year 1931.

We have made a survey of the situation and have prepared statements indicating what we believe is a conservative estimate of the probable gross earnings, and showing operating expenses and other charges as now programmed and which are very close to the irreducible minimum unless we make some further drastic reduction in service.

The realization of the goal indicated by you is largely dependent upon gross earnings. Actual results for the first three months of the year reflect a decrease in total railway operating revenues of $1,324,505, and present indications are that April will show a further decrease of something like $350,000, making the total decrease for four months $1,674,000 as compared with the same period last year. The general conditions effecting this decrease will no doubt continue but will be off-set in a measure by the special movement of East Texas oil to Baytown, Itreco, and Pt. Arthur, which traffic incidentally takes very low rate per car, and by increased movement of citrus during the latter part of the year. The major trends in our freight traffic are shown in a separate statement attached. Passenger revenues are showing a very sub-

stantial reduction under last year and there are no prospects for improvement in the near future.

Taking all these factors into consideration, we are estimating gross revenues for the year at $12,889,034, a reduction of $2,539,387 or 16.4% under 1930. As stated above, for the first four months our gross revenue will be $1,674,000 or 26% behind the same period last year.

Our Maintenance of Way and Structures expenses are now programmed at $1,801,507, a reduction of $591,622 or approximately 25% under last year. We have reduced our operating expenses in connection with improvements from $382,600, as originally budgeted, to $55,100; this involves deferring all rail and ballast work. We plan on using 150,000 cross ties as compared with 212,000 last year.

Our present program for Maintenance of Equipment means that we must hold our expenditures for the year to $2,102,409, a reduction of $621,756 or 22.8% under last year. This will be the lowest expenditure for MofE since 1924 and provides running repair money only for locomotives and cars, except that we will be able to turn out about 15 Class 1, 2 and 3 repairs as compared with 49 last year. At the end of 1931 there will be about 30 engines which will have run out their assigned mileage.

[fol. 131] Transportation Expenses are estimated at $3,654,538, a reduction of $508,189 under last year, the estimated transportation ratio being 28.35, as compared with 26.98 last year. This estimate gives effect to the reduction in passenger service on the Kingsville Division in January, amounting to approximately 242,000 train miles per annum; also, takes into consideration a substantial improvement in freight train performance as a result of placing 1200-class engines on the Kingsville Division. The estimate further involves a very close check of our supervisory, yard, and station forces which is now being done. The increase in transportation ratio anticipated is entirely due to the low level of earnings.

We will not be able to show much reduction in hire of freight cars because of the fact that such increases as we anticipate in freight traffic will be largely in oil and vegetables, involving increase in private line mileage.

Net income for the year on this basis is estimated at

$457,519, a reduction of $644,382 under last year and $680,581 under the goal set by you in your letter mentioned above.

The net result falls far short of what you want to accomplish and I realize this is disappointing and am still hopeful we can improve it and we shall make every possible effort to do so. Our present program for MofW and MofE is materially under last year and we have felt that we have gone as deeply into these expenditures as we could without impairing, the standard of service, but we will continue to check this further to see what more can be done, in recognition of your request.

(signed in pencil) H. R. S.

[fol. 132] Comstock Exhibit 85.

File

St. Louis—November 8, 1926.

cc—Mr. F. P. Johnson.

1-340

Mr. H. R. Safford:—

The following action was taken by the Gulf Coast Lines Executive Committee on November 4th:

"The Chairman recommended the declaration of the usual quarterly dividend.

Whereupon, on motion duly made and seconded, it was unanimously

Resolved that a dividend of 1¾% be paid on the outstanding stock of the Company for the three months ending November 30, 1926, payable December 1, 1926, to stockholders of record as of November 15, 1926.

Resolved that the Chairman be and he hereby is authorized to direct the proper officers of the Company to make the necessary arrangements for the payment and distribution of the dividend."

(Stamp) (Signed) L. W. BALDWIN,
Per W. G. V.

[fol. 133] Comstock Exhibit 86.

St. Louis, Mo., May 8, 1928 1-340

Mr. H. R. Safford:

Resolution was adopted April 24 providing for payment of dividend of 1¾% on outstanding stock of the New Orleans, Texas & Mexico Railway Company, for the 3 months ending May 31, 1928, payable June 1, 1928, to stockholders of record, as of May 15, 1928.

(Stamp) (Signed) L. W. BALDWIN,
Per .....

cc—Mr. F. P. Johnson

[fol. 134] Comstock Exhibit 87.

St. Louis, Mo., August 8, 1928.
1-340

Mr. H. R. Safford:

Resolution was adopted July 31, providing for payment of dividends of 1¾% on outstanding stock of the New Orleans, Texas and Mexico Railway Company for three months ending August 31, 1928, payable September 1, 1928, to stockholders of record as of August 15, 1928.

(Stamp) (Signed) L. W. BALDWIN
Per C. D. P.

cc—Mr. F. P. Johnson

[fol. 135] Comstock Exhibit 88.

Saint Louis—October 29, 1928.

Mr. H. R. Safford:

Resolution was adopted October 23rd providing for payment of dividend of 1¾% on outstanding stock of the New Orleans, Texas and Mexico Railway Company for three months ending November 30th, 1928 payable December 1st, 1928 to Stockholders of record as of November 15th, 1928.

(Stamp) (Signed) L. W. BALDWIN
10 Per E. F. B. JR.

cc—Mr. F. P. Johnson

[fol. 136] Comstock Exhibit 89.

January 23, 1929

Mr. H. R. Safford:

Resolution was adopted January 15th providing for payment of dividends of 1¾% on outstanding stock of the New Orleans, Texas & Mexico Ry. Co. for the three months ending February 28, 1929, payable March 1, 1929, to stockholders of record as of February 15, 1929.

(Stamp) (Signed) L. W. BALDWIN
Per E. F. B. JR.

cc
Mr. F. P. Johnson

[fol. 137] Comstock Exhibit 90.

Saint Louis—April 18, 1930

Mr. Safford:

The following action was taken by the Executive Committee of the New Orleans, Texas, & Mexico Railway Company on April 15th:

"The Chairman recommended the declaration of usual quarterly dividend.

Whereupon on motion duly made and seconded it was unanimously

Resolved that a dividend of 1¾% be paid on the outstanding stock of the Company for the three months ending May 31, 1930, payable June 2, 1930, to stockholders of record as of May 16, 1930.

Resolved that the Chairman be and he hereby is authorized to direct the proper officers of the Company to make the necessary arrangements for the payment and distribution of the dividend."

L. W. BALDWIN (Sgd.)

cc Mr. Johnson

[fol. 138] Comstock Exhibit 91.

Excerpts from minutes of meeting of Board of Directors of Missouri Pacific Railroad Company held April 10, 1924.

Minutes of meeting of Board of Directors held at office of the Company No. 120 Broadway, New York, at 2:30 o'clock, P. M., April 10th, 1924, pursuant to due notice.

Present:

Messrs. B. F. Bush (Chairman)
William H. Williams
Charles E. Ingersoll
Finley J. Shepard
R. Lancaster Williams
Matthew C. Brush
John G. Lonsdale
Charles H. Sabin
James W. Gardiner
L. W. Baldwin
George W. Niedringhaus
H. L. Utter
John J. Raskob.

Carl A. de Gersdorff (Assistant General Counsel)
H. L. Utter (Secretary)

Purchase of Stock of New Orleans Texas & Mexico Railway Company

Mr. Williams, Chairman of the Executive Committee, then presented to the Board the matter of the proposed purchase of shares of the capital stock of the New Orleans, Texas & Mexico Railway Company (Gulf Coast Lines) and explained in detail an agreement which had been negotiated by him, with the co-operation and assistance of Messrs. Kuhn, Loeb & Co., for the purchase from W. A. Harriman & Co., Inc., and Blair & Co., Inc., of said stock. The Agreement as outlined by Mr. Williams provided for the purchase by the Missouri Pacific Railroad Company from said bankers on June 2, 1924 of 37,500 shares of the capital stock of the New Orleans, Texas & Mexico Railway Company (being 25% of the outstanding capital stock

thereof) at the price of $120. per share, payable in the 7% Notes of this Company maturing September 1, 1925, secured by the pledge of the stock so purchased. In consideration of such purchase this Company is to be given an option by said bankers to purchase an additional 39,000 shares of stock of said New Orleans, Texas & Mexico Railway Company, being an additional 26% thereof, at the same price. The agreement further contemplated that the directors of the New Orleans, Texas & Mexico Railway Company should prior to the purchase of the stock by this Company declare a cash dividend to the present stockholders aggregating the sum of $2,475,000. It further provided for the acquisition by the Company of additional shares on the same terms to such extent as the bankers might be able to offer the same. The agreement also provided that this Company should exercise its option to acquire the additional 26% of said stock in case the Interstate Commerce Commission should grant the [fol. 139] necessary authority to enable it to exercise the same, and to issue in payment for said stock its Seven Per Cent. Fifteen-Year Collateral Trust Gold Bonds, secured by the pledge of stock of the New Orleans, Texas & Mexico Railway Company acquired, which by the terms of said agreement were to be accepted by said bankers in payment for said stock at par. The agreement further provides that in case the Interstate Commerce Commission should authorize the issue of said Seven Per Cent. Fifteen-Year Collateral Trust Gold Bonds, this Company should have the right at any time prior to January 1, 1925 to exchange into such bonds, par for par, its 7% Collateral Trust Notes issued for the purchase of said 37,500 shares of said stock.

Mr. Williams further explained that the New Orleans, Texas & Mexico Railway Company had entered into an agreement to acquire, subject to the approval of the Interstate Commerce Commission, all of the capital stock of the International-Great Northern Railroad Company at the price of $31. per share, payable in cash on or before June 14; and also, subject to like approval, to guarantee the payment of interest up to four per cent. per annum upon the Adjustment Mortgage Gold Bonds, Series A, of the International-Great Northern Railroad Company.

Mr. Williams fully explained the proposed transaction and read to the Board a statement compiled from reports recently made by the Chief Engineer of the Missouri Pacific of examinations of the property of the New Orleans, Texas & Mexico Railway Company and the International-Great Northern Railroad Company and from the annual reports of said Companies, and the reports made to him by the officers of the Gulf Coast Lines regarding the earnings of said properties, which statements and reports and other data upon which the same was based were filed among the records of the Company.

Mr. Williams further stated that the matter had been submitted to the Executive Committee at its meeting held April 4, 1924, and again at its meeting held April 10, 1924, and that the Executive Committee had adopted a resolution approving of the proposed purchase and recommending it for the approval of the Board of Directors. A general discussion followed, in which the President of the Company participated and expressed himself as being heartily in favor of the proposed transaction.

Mr. Williams further stated that in connection with the purchase he had agreed with Messrs. Kuhn, Loeb & Co., subject to the approval of the Board, that their compensation for services rendered in connection with the negotiations should be an amount equal to 1¼% of the face amount of securities issued by the Missouri Pacific Railroad Company in connection with said purchase.

Mr. Williams also read and submitted to the Board a memorandum of agreement which had been submitted to and approved by the Executive Committee and which had been initialed by him on behalf of the Missouri Pacific Railroad Company, and by Messrs. G. H. Walker and Elisha Walker on behalf of the bankers, and which provided that a more formal agreement should be entered into upon the approval of the transaction by the Boards of Directors of the various parties concerned.

[fol. 140] On motion, duly seconded, it was

Resolved that the Board approve the purchase of 37,500 shares of the capital stock of the New Orleans, Texas &

Mexico Railway Company in connection with an option to purchase an additional 39,000 shares of said stock, and the purchase of as much more of said stock as may be obtained, all on the terms outlined to the Board by the Chairman of the Executive Committee and embodied in the memorandum of agreement submitted by him.

Resolved that the proper officers of the Company be and they hereby are authorized to execute and deliver $4,500,000. principal amount of the Fifteen-Month Notes of the Company in such form as may be approved by the Executive Committee and as may be required to carry out the purchase of said 37,500 shares of stock of the New Orleans, Texas & Mexico Railway Company, such Notes to be issued under an agreement or indenture in such form, if any, as may be determined by the Executive Committee.

Resolved that the proper officers of the Company be and they hereby are authorized to execute a trust indenture in such form and to such trust company as the Executive Committee shall determine, to secure the Seven Per Cent. Fifteen-Year Collateral Trust Gold Bonds of this Company to be issued in payment for said shares of stock of the New Orleans, Texas & Mexico Railway Company to be acquired by this Company, or for the exchange of Fifteen-Month Notes of this Company to be issued in respect of the acquisition of said 37,500 shares of stock of the New Orleans, Texas & Mexico Railway Company, all as required by the Memorandum of Agreement submitted to this meeting.

Resolved that the proper officers of the Company be and they hereby are authorized to cause said Seven Per Cent. Fifteen-Year Collateral Trust Gold Bonds to be issued to W. A. Harriman & Co., Inc. and Blair & Co., Inc. in payment of the purchase price of the shares of stock of the New Orleans, Texas & Mexico Railway Company to be acquired by this Company from said bankers, or for the exchange of $4,500,000. of Fifteen-Month Notes of this Company as may be issued in respect of the acquisition of said 37,500 shares of stock of the New Orleans, Texas & Mexico Railway Company, all as required by the Memorandum of Agreement submitted to this meeting.

Further Resolved that the President and the Chairman of the Executive Committee, or either of them, be and they hereby are authorized to complete the negotiations for the purchase of said stock outlined by the Chairman of the Executive Committee and embodied in said Agreement, to execute and deliver on behalf of the Company any formal agreement for said purchase or to adopt as such formal agreement the memorandum submitted to the Board, and to execute and deliver any and all other papers and instruments in their judgment necessary or expedient in connection with said transaction, with authority to make such minor modifications as in the judgment of them or either of them may be expedient, or as the Executive Committee may authorize.

Further Resolved that the compensation of Messrs. Kuhn, Loeb & Co., in an amount equal to 1¼% of the face value of such securities as may be issued by the Company in connection with the purchase of said stock be and the same is hereby approved, and the Chairman of the Executive Committee be and he hereby is authorized to make payment of said compensation upon the completion of said transaction.

On motion duly seconded, it was further

[fol. 141] Resolved that the Chairman of the Executive Committee, or the President or Finley J. Shepard, Vice-President, be and any one of them is hereby authorized to execute and file with the Interstate Commerce Commission, in such form as may be required by its rules and regulations, an application or applications for authority pursuant to Paragraph 2 of Section 5 of the Interstate Commerce Act to acquire control of the New Orleans, Texas & Mexico Railway Company by the purchase of its capital stock, and for authority pursuant to Section 20a of the Interstate Commerce Act to issue the Collateral Trust Bonds of the Company in the amount required by the agreement this day approved to complete the purchase of said stock.

[fol. 142] Comstock Exhibit 92.

Excerpts from minutes of meeting of Executive Committee of Missouri Pacific Railroad Company held July 7, 1926.

Minutes of meeting of Executive Committee held at office of the Company No. 120 Broadway, New York, at 10:00 o'clock A. M., July 7, 1926, pursuant to due notice.

Present:

Messrs. William H. Williams (Chairman)
Matthew C. Brush
Charles H. Sabin
H. Hobart Porter

H. L. Utter (Secretary)

Whereupon, on motion duly seconded, it was unanimously

Resolved that the action of the Chairman in loaning in behalf of the Company to the International-Great Northern Railroad Company the sum of $1,000,000. on the unsecured demand note of that company bearing interest at the rate of 4½% per annum, be and the same is hereby approved.

[fol. 142a] Comstock Exhibit 93.

Excerpts from minutes of meeting of Executive Committee of Missouri Pacific Railroad Company held November 11, 1926.

Minutes of meeting of Executive Committee held at office of the Company, No. 120 Broadway, New York, at 3:30 o'clock P. M., November 11, 1926, pursuant to due notice.

Present:

Messrs. William H. Williams (Chairman)
Matthew C. Brush
H. Hobart Porter
J. E. Davey (Director)
Leonard D. Adkins (of Counsel)
H. L. Utter (Secretary)

November 11, 1926

Messrs. Kuhn, Loeb & Co.,
New York, N. Y.

Dear Sirs:

Referring to the $13,156,000 principal amount Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, maturing in equal annual instalments from December 1, 1931 to December 1, 1956, both inclusive, which you have agreed to purchase, I state the following for your information:

The Bonds will be the direct obligation of the Missouri Pacific Railroad Company and will be secured by the deposit and pledge with a trust company, as trustee under a trust indenture, of $1,000 par value of New Orleans, Texas & Mexico Railway Company stock for each $1,000 principal amount of bonds outstanding, as provided in the trust indenture.

Missouri Pacific Railroad Company owns $13,160,500 par value of New Orleans, Texas & Mexico Railway Company

stock being approximately 87¾% of the outstanding stock. This stock was acquired by the Missouri Pacific Railroad Company at a cost of $120. per share. Dividends are being paid at the rate of 7% per annum. For the fiscal year ended December 31, 1925, the earnings of New Orleans, Texas & Mexico Railway Company applicable to dividends were equivalent to 16¾% on its stock, and for the last three fiscal years such earnings averaged about 17⅛%.

[fol. 142b] The proceeds of the sale of the bonds will be applied to the retirement of $13,391,500 of this Company's Fifteen Year 7% Sinking Fund Notes which are to be called for redemption on January 17, 1927. This new issue will, therefore, result in a substantial reduction of the annual fixed charges of the Company.

The gross income of the Missouri Pacific Railroad Company for the year ended December 31, 1925, applicable to the payment of interest on funded debt and other fixed charges, amounted to $23,167,799, while such charges amounted to only $14,823,943. Such income for the nine months ended September 30, 1926, increased $1,749,020 over the same period of last year.

The total authorized amount of the 5¼% Secured Serial Gold Bonds is limited to $15,000,000 principal amount. The $13,156,000 principal amount of bonds which you have agreed to purchase will mature in equal annual instalments of $506,000 from December 1, 1931 to December 1, 1956, both inclusive and will bear interest from December 1, 1926 at the rate of 5¼% per annum, payable semi-annually on June 1 and December 1 of each year. They will be issued in coupon form in the denomination of $1,000. each with the privilege of registration as to principal. The bonds will be redeemable as a whole, but not in part, on any interest date upon sixty days' previous notice, at their principal amount and accrued interest, plus a premium equal to ½% for each six months between the redemption date and the date of maturity, but not exceeding 5%. Both the principal of and interest on the bonds will be payable in gold coin of the United States

of America of the standard of weight and fineness existing December 1, 1926, without deduction for any tax, assessment or other governmental charge (except any Federal Income Tax) which the Company or the Trustee may be required to pay thereon or to retain therefrom under any present or future law of the United States of America or of any state, municipality or other taxing authority therein.

The issuance of these bonds and their sale to you are subject to the approval of the Interstate Commerce Commission and all proceedings in connection with the creation and issuance thereof are subject to the approval of your counsel.

Pending the issue of the definitive bonds, temporary bonds or interim certificates will be issued.

Yours very truly,

Chairman of the Board.

On motion duly made and seconded, it was unanimously

Resolved that the letters to be written to Messrs. Kuhn, Loeb & Co. in connection with the sale of $13,156,000 principal amount, 5¼% Secured Serial Gold Bonds of this Company, which have been submitted to this meeting, be and they hereby are in all respects approved, and that the Chairman of this Board be and he hereby is authorized to execute and deliver to Messrs. Kuhn, Loeb & Co. letters substantially in said form.

[fol. 142c] Comstock Exhibit 94.

Excerpts from minutes of meeting of Executive Committee of Missouri Pacific Railroad Company held December 27, 1927.

Minutes of meeting of Executive Committee held at No. 120 Broadway, New York, N. Y., at 11:00 o'clock A. M., December 27, 1927, pursuant to due notice.

Present:

Messrs. William H. Williams (Chairman)
Matthew C. Brush
H. Hobart Porter
Charles Sabin

Carl A. deGersdorff (Asst. General Counsel)
H. L. Utter (Secretary)

Sale of $5,900,000 N. O. T. & M. First Mortgage Series D 4½% Bonds.

As a matter of information the Chairman stated that, subject to the approval of the Interstate Commerce Commission, $5,900,000 New Orleans, Texas & Mexico Railway Co. First Mortgage, Series D 4½% Bonds had been sold by that Company to Messrs. Kuhn, Loeb & Co. at 95¾% and accrued interest, or on a basis of 4.775%.

[fol. 143] Comstock Exhibit 95.

Excerpts from minutes of meeting of Executive Committee of Missouri Pacific Railroad Company held February 11, 1930.

Minutes of meeting of Executive Committee held at office of the Company, No. 120 Broadway, New York, N. Y., at 11:00 o'clock A. M., February 11, 1930 pursuant to due notice.

Present:

Messrs. William H. Williams (Chairman)
Matthew C. Brush
Finley J. Shepard

A. R. Graustein (Director)
Leonard D. Adkins (of Counsel)
Wm. Wyer (Secretary)

Interest on Advances to Subsidiary Companies

The Chairman informed the Committee that, effective as of February 1, 1930, interest to be applied in connection with advances made to subsidiary companies would be at the rate of 5% per annum.

[fol. 144] Comstock Exhibit 96.

Excerpts from minutes of meeting of Executive Committee of Missouri Pacific Railroad Company held February 4, 1930.

Minutes of meeting of Executive Committee held at office of the Company, No. 120 Broadway, New York, N. Y., at 11:00 o'clock A. M., February 4, 1930, pursuant to due notice.

Present:

Messrs. William H. Williams (Chairman)
Matthew C. Brush
Arthur V. Davis
Charles H. Sabin
Finley J. Shepard

Carl A. deGersdorff (Asst. General Counsel)
Wm. Wyer (Secretary)

Advance of $100,000, to New Orleans, Texas & Mexico Railway Company

The Chairman stated that on January 30, 1930, the Company had advanced $100,000. to New Orleans, Texas & Mexico Railway Company, which on motion duly seconded, was approved.

[fol. 145] Comstock Exhibit 97.

New Orleans, Texas & Mexico Railway Company

Minutes of meeting of Executive Committee held at office of the Company, No. 120 Broadway, New York, N. Y., at 11:15 o'clock A. M., February 4, 1930, pursuant to due notice.

Present:

Messrs. William H. Williams (Chairman)
Matthew C. Brush
Arthur W. Davis
Charles H. Sabin
Finley J. Shepard

Carl A. deGersdorff (General Counsel)
Wm. Wyer (Assistant Secretary)

Approval of Minutes

The minutes of the meeting of the Executive Committee held January 28, 1930, were read and approved.

Road and Equipment Expenditures

On motion duly seconded, it was unanimously

Resolved that the following expenditure be and the same is hereby authorized:

System:

$10,726.; all of which is chargeable to Road and Equipment, covering cost of installation of additional steam drums and water treating system on the Steamer "Willard V. King."

Resolved that consent to the following expenditure proposed to be made by the St. Louis, Brownsville & Mexico Railway Company be, and the same is hereby, given:

Near Liverpool, Texas:

$9,420., of which $5,780. is chargeable to Road and Equipment, covering cost of replacing the north approach of Bridge 334.3, a 14-panel pile trestle 193 ft. in length, with one standard 15-panel ballasted deck pile trestle 195 ft. in length.

Advance of $100,000. by Missouri Pacific Railroad Company

The Chairman stated that on January 30, 1930, the Missouri Pacific Railroad Company had advanced $100,000. to this Company, carrying interest at 5%, which on motion duly seconded, was approved.

[fol. 146] Comstock Exhibit 98.

Excerpts from Minutes of Meeting of Executive Committee of Missouri Pacific Railroad Company held March 4, 1930.

Minutes of meeting of Executive Committee held at office of the Company, No. 120 Broadway, New York, N. Y., at 11:45 o'clock A. M. March 4, 1930, pursuant to due notice.

Present:

Messrs. William H. Williams (Chairman)
L. Warrington Baldwin
Charles H. Sabin
Finley J. Shepard

William T. Kemper (Director)
A. D. Geoghegan (Director)
R. Lancaster Williams (Director)
Carl A. deGersdorff (Asst. General Counsel)
Wm. Wyer (Secretary)

Advance of $260,000. to New Orleans, Texas & Mexico Railway Company

The Chairman informed the Committee that on February 28, 1930, this Company had advanced $260,000. to the New Orleans, Texas & Mexico Railway Company, to bear interest at the rate of 5% per annum, which on motion duly made and seconded was approved.

[fol. 147] Comstock Exhibit 99.

Excerpts from Minutes of Meeting of Executive Committee of Missouri Pacific Railroad Company held April 3, 1930.

Minutes of meeting of Executive Committee held at office of the Company, No. 120 Broadway, New York, N. Y., at 11:45 o'clock A. M. April 3, 1930, pursuant to due notice.

Present:

Messrs. William H. Williams (Chairman)
L. Warrington Baldwin
Matthew C. Brush
Charles H. Sabin
Finley J. Shepard

William T. Kemper (Director)
John G. Lonsdale (Director)
Carl A. deGersdorff (Asst. General Counsel)
Wm. Wyer (Secretary)

Advance of $100,000. to
Missouri Improvement Company

On motion duly seconded, it was unanimously

Resolved that this Company advance $100,000. to the Missouri Improvement Company for the purpose of purchasing 1,000 shares of capital stock of the Okmulgee Northern Railway Company, which were acquired by the Improvement Company on December 7, 1927, with the approval of the Executive Committee of this company on November 1, 1927, with the understanding that the stock is to be held by the Treasurer of the Missouri Pacific Railroad Company as security for the payment of said advance.

[fol. 148] Approval of Advances to
New Orleans, Texas & Mexico Railway Company
International-Great Northern Railroad Company

The Chairman informed the Committee that on March 31, 1930, the Company had made the following advances, to bear interest at the rate of 5% per annum:

New Orleans, Texas & Mexico Railway Company	$ 430,000.
International-Great Northern Railroad Company	690,000.
	$1,120,000.

which, on motion duly seconded, was approved.

[fol. 149] Comstock Exhibit 100.

Excerpts from Minutes of Special Meeting of Board of Directors of Missouri Pacific Railroad Company held December 18, 1930.

Minutes of special meeting of Board of Directors held at office of the Company, 3500 Terminal Tower, Cleveland, Ohio, at 2:00 o'clock P. M., December 18, 1930, pursuant to due notice.

Present:

Messrs. O. P. Van Sweringen (Chairman)
L. W. Baldwin
Leonard P. Ayres
Darwin S. Barrett, Jr.
Alva Bradley
John R. Flippin
William T. Kemper
John G. Lonsdale
W. W. Reilley
John Sherwin, Jr.
George A. Tomlinson

John P. Murphy (of Counsel)
Edwin G. Wagner (Assistant Secretary)

Advance of $300,000. to
New Orleans, Texas & Mexico Railway Company

On motion duly seconded, it was unanimously

Resolved that the action of the Treasurer of this Company in advancing $300,000. to New Orleans, Texas & Mexico Railway Company, on November 29, 1930, to bear interest at the rate of 5% per annum, be, and the same is hereby approved.

[fol. 150] Comstock Exhibit 101.

Excerpts from Minutes of Meeting of Board of Directors of Missouri Pacific Railroad Company held May 14, 1931.

Minutes of first meeting of newly elected Board of Directors held at office of the Company, room No. 3500, Terminal Tower, Cleveland, Ohio, at 2:00 o'clock P. M., May 14, 1931, pursuant to due notice.

Present:

Messrs. O. P. Van Sweringen
L. W. Baldwin
Leonard P. Ayres
Darwin S. Barrett, Jr.
Alva Bradley
Henry G. Dalton
W. W. Reilley
John Sherwin, Jr.
George A. Tomlinson

Herbert Fitzpatrick (Vice-President—Law and Corporate Relations)
Wm. Wyer (Secretary)

Authorization of Chairman of the Board or the Treasurer to Borrow $1,250,000. for Requirements Up to June 1, 1931.

The Chairman stated that the cash payments which the Company was required to meet up to June 1, 1931, including dividends and interest on funded debt, aggregated $3,947,000., and that funds on hand, including contemplated receipts, available to meet such payments, after allowing for the necessary minimum working balances in banks, were $2,789,000.

Whereupon, on motion duly seconded, it was unanimously

Resolved that the Chairman of the Board of Directors, or the Treasurer be, and they hereby are, authorized to borrow $1,250,000., and to execute and deliver as the obligation of this Company in its name and on its behalf for same its promissory note or notes up to said amount.

Authorization of Chairman of the Board or the Treasurer to Pledge Collateral as Security for Loan of $1,250,000.

On motion duly seconded, it was unanimously

Resolved that the Chairman of the Board of Directors, or the Treasurer be, and they hereby are, authorized to [fol. 151] assign and pledge as collateral security for a loan not exceeding $1,250,000. such available collateral as said officers or either of them deem necessary.

Authorization of Chairman of the Board or the Treasurer to Borrow $2,300,000. for Requirements During June, 1931.

The Chairman stated that the cash payments which the Company was required to meet during June, 1931, including dividends and interest on funded debt, aggregated $4,012,000., and that funds on hand, including contemplated receipts available to meet such payments, after allowing for the necessary minimum working balances in banks, were $2,189,000.

Whereupon, on motion duly seconded, it was unanimously

Resolved that the Chairman of the Board of Directors, or the Treasurer, be, and they hereby are, authorized to borrow $2,300,000., and to execute and deliver as the obligation of this Company in its name and on its behalf for same its promissory note or notes up to said amount.

Authorization of Chairman of the Board or the Treasurer to Pledge Collateral as Security for Loan of $2,300,000.

On motion duly seconded, it was unanimously

Resolved that the chairman of the Board of Directors, or the Treasurer, be, and they hereby are, authorized to assign and pledge as collateral security for a loan not exceeding $2,300,000. such available collateral as said officers or either of them deem necessary.

Declaration of Quarterly Dividend

On motion duly seconded, it was unanimously

Resolved that a quarterly dividend of one and one-quarter per cent. (1¼%) upon the Preferred Stock of the Company for the quarter ending June 30, 1931, is hereby declared payable on July 1, 1931, to stockholders of record at the close of business 3:00 o'clock P. M. June 12, 1931.

Resolved that the proper officers of this Company be, and they hereby are, authorized to take any and all action which they may deem necessary or proper fully to carry into effect the foregoing resolution.

[fol. 152] Comstock Exhibit 102.

Excerpts from Minutes of Meeting of Board of Directors of Missouri Pacific Railroad Company held July 14, 1931.

Minutes of meeting of Board of Directors held at office of the Company, No. 3500 Terminal Tower, Cleveland, Ohio, at 2:00 o'clock P. M., July 14, 1931, pursuant to due notice.

Present:

Messrs. O. P. Van Sweringen (Chairman)
L. W. Baldwin
Leonard P. Ayres
Darwin S. Barrett, Jr.
Alva Bradley
John R. Flippin
William T. Kemper
George A. Tomlinson
Henry G. Dalton

Herbert Fitzpatrick (Vice-President—Law and Corporate Relations)
Wm. Wyer (Secretary)

Authorization of Chairman of the Board or the Treasurer to borrow $2,750,000. to meet requirements up to September 1, 1931.

The Chairman stated that the cash payments which the Company was required to meet up to September 1, 1931, including dividends and interest on funded debt, aggregated $12,151,000., and that funds on hand, including contemplated receipts, available to meet such payments, after allowing for the necessary minimum working balances in banks, were $5,351,000., leaving a balance of $6,800,000. of which the Board of Directors has already authorized the borrowing of $4,550,000., and that it was advisable to authorize the additional borrowing of $2,750,000. at this time.

Whereupon, on motion duly seconded, it was unanimously

Resolved, that the Chairman of the Board of Directors or the Treasurer, be, and they hereby are, authorized to borrow $2,750,000. and to execute and deliver as the obligation of this Company, in its name and on its behalf for same, its promissory note or notes up to said amount, upon such terms and conditions agreeable to said officers or either of them.

[fol. 153] Comstock Exhibit 103.

Excerpts from Minutes of Meeting of Board of Directors of Missouri Pacific Railroad Company held April 12, 1932.

Minutes of meeting of Board of Directors held at office of the Company, No. 3500 Terminal Tower, Cleveland, Ohio, at 2:00 o'clock P. M., April 12, 1932, pursuant to due notice.

Present:

Messrs. O. P. Van Sweringen (Chairman)
L. W. Baldwin
Leonard P. Ayres
Darwin S. Barrett, Jr.
Alva Bradley
Henry G. Dalton
Arthur V. Davis
John R. Flippin
John G. Lonsdale
W. W. Reilley
John Sherwin, Jr.
George A. Tomlinson

Herbert Fitzpatrick (Vice-President—Law and Corporate Relations)
Wm. Wyer (Secretary)

Advances of $900,000. to The Texas and Pacific Railway Company

The Chairman stated that it will probably be necessary to advance $400,000. to The Texas and Pacific Railway Company on or before May 1, 1932, and an additional $500,000. on or before June 1, 1932.

Whereupon, after discussion, the following resolutions were unanimously adopted:

Resolved, that this Company advance to The Texas and Pacific Railway Company the sum of $400,000. on or before May 1, 1932, and $500,000. on or before June 1, 1932, all with interest payable semi-annually at the rate of 6% per annum; and

Resolved, that for the purpose of securing the repayment of $400,000. to be advanced on or before May 1, 1932, and $500,000. to be advanced on or before June 1, 1932, [fol. 154] this Company require that The Texas and Pacific Railway Company deposit with it such securities and collateral from time to time as may be available and acceptable to the Chairman of the Board of Directors or the Treasurer of this Company, accompanied by an authorization to this Company to assign, pledge or repledge said securities and collateral from time to time for a promissory note or promissory notes of this Company; and

Resolved, that, to the extent permitted by law, the Chairman of the Board of Directors or the Treasurer of this Company be, and they hereby are, authorized to assign, pledge and repledge from time to time, as collateral security for a promissory note or [promossory] notes of this Company, such securities and collateral as may be hereafter held by this Company as security for advances or loans to be made to The Texas and Pacific Railway Company, or the interest of this Company in such securities and collateral; and

Resolved, that the Chairman of the Board of Directors or the Treasurer be, and they hereby are, authorized to execute any and all papers and to do any and all things which in their opinion may be necessary or proper to make effective the purposes of these resolutions.

Advances aggregating $175,000. to
International-Great Northern Railroad Company

On motion duly seconded, it was unanimously

Resolved, that the action of the Treasurer of this Company in advancing

$ 35,000. on March 26, 1932
$140,000. on April 1, 1932

to International-Great Northern Railroad Company, to bear interest at the rate of 6% per annum, payable on January 1, April 1, July 1 and October 1 of each year, be, and the same is hereby, approved.

Advance of $925,000. to
New Orleans, Texas & Mexico Railway Company

On motion duly seconded, it was unanimously

Resolved, that the action of the Treasurer of this Company in advancing $925,000. to New Orleans, Texas & Mexico Railway Company on April 1, 1932, to bear interest at the rate of 6% per annum, payable January 1, April 1, July 1 and October 1 of each year, be and the same is hereby, approved.

[fol. 155] Interest on Advances to Subsidiaries

On motion duly seconded, it was unanimously

Resolved, that, effective April 1, 1932, this Company charge interest at the rate of six per cent. per annum, payable on January 1, April 1, July 1 and October 1 of each year, on advances heretofore made to New Orleans, Texas & Mexico Railway Company and International-Great Northern Railroad Company.

Waiver of Interest on General Refunding
Mortgage Bonds of New Orleans and Lower
Coast Railroad Company

Whereas, Missouri Pacific Railroad Company now owns all of the Capital Stock and all of the outstanding General Refunding Mortgage Bonds of the New Orleans, and Lower Coast Railroad Company; and

Whereas, the New Orleans and Lower Coast Railroad Company has not been, and at present is not, financially able to discharge its obligations with respect to the interest on its General Refunding Mortgage Bonds:

Resolved, that the Missouri Pacific Railroad Company hereby waives the semi-annual interest payments upon the General Refunding Mortgage Six Per Cent, Gold Bonds, Series A., of the New Orleans and Lower Coast Railroad Company, owned by the Missouri Pacific Railroad Company, dated September 1, 1931, and maturing September 1, 1981, until such time as the New Orleans and Lower Coast Railroad Company shall be financially able to pay the semi-annual interest due upon said bonds; provided, however, that nothing contained herein, nor any action taken or omitted pursuant hereto by the Missouri Pacific Railroad Company or any officer or officers thereof, shall constitute a waiver or relinquishment of, or otherwise affect, any right or rights of the Missouri Pacific Railroad Company as the holder of said bonds.

Waiver of Interest Charge
Missouri Pacific Transportation Company

The Chairman stated that the Missouri Pacific Transportation Company, a wholly owned subsidiary, had been charged with interest at the rate of 5% per annum on certain cash advances made from time to time by this Company. Investment of this cash was made on December 23, 1931 and it appears proper that interest accrued subsequent to that date should be waived.

Whereupon, on motion duly seconded, it was unanimously,

Resolved that Missouri Pacific Railroad Company hereby waives such interest as is chargeable subsequent to December 23, 1931 against the Missouri Pacific Transportation Company for existing cash advances.

[fol. 156] Comstock Exhibit 104.

Excerpts from Minutes of Meeting of Executive Committee of New Orleans, Texas & Mexico Railway Company held September 20, 1927.

New Orleans, Texas & Mexico Railway Company

Minutes of meeting of Executive Committee held at office of the Company, No. 120 Broadway, New York, at 11:15 o'clock A. M., September 20, 1927, pursuant to due notice.

Present:

Messrs. William H. Williams (Chairman)
Matthew C. Brush
H. Hobart Porter
Charles H. Sabin

John J. Raskob (Director)
Leonard D. Adkins (of Counsel)
H. L. Utter (Secretary)

Exercise of option to purchase $823,300. International-Great Northern Railroad Co. Adjustment Mortgage Bonds

The Chairman stated that this Company had the right to purchase on or before December 31, 1927 $823,300. principal amount, Adjustment Mortgage Bonds of International-Great Northern Railroad Company at 85% of their principal amount, plus interest at the rate of 4% per annum from January 1, 1927 to the date of purchase, such bonds being the bonds which had accepted the offer of this Company to guarantee interest thereon at the rate of 4% per annum.

He also stated that this Company did not have surplus funds to provide for such purchase and that Missouri Pacific Railroad Company was prepared to provide the necessary funds either by advancing the same or by purchasing said Adjustment Mortgage Bonds from this Company.

On motion, duly made and seconded, it was unanimously

Resolved that pursuant to the terms of the agreement between this Company and the holders of $823,300., principal amount, Adjustment Mortgage Bonds of International-Great Northern Railroad Company (being the bonds stamped to evidence their acceptance of such agreement), this Company exercise on December 1, 1927, its right to purchase all said bonds at 85% of their principal amount plus interest at the rate of 4% per annum from January 1, 1927 to December 1, 1927.

[fol. 157] Resolved that the proper officers of this Company be and they hereby are authorized and directed to cause notice of the exercise by this Company of said right of purchase in such form as the Chairman of the Board may determine to be given as required by said agreement and otherwise as the Chairman of the Board may determine.

Resolved that the proper officers of this Company be and they hereby are authorized to procure the funds necessary to purchase said Adjustment Mortgage Bonds by borrowing the same from Missouri Pacific Railroad Company or by selling to Missouri Pacific Railroad Company the bonds so purchased, all on such terms as the Chairman of the Board may approve.

[fol. 158] Comstock Exhibit 105.

Excerpts from Minutes of Board of Directors of New Orleans, Texas & Mexico Railway Company held December 13, 1932.

New Orleans, Texas & Mexico Railway Company

Minutes of meeting of Board of Directors held at office of the Company, No. 3500 Terminal Tower, Cleveland, Ohio, at 2:25 o'clock P. M., December 13, 1932, pursuant to due notice.

Present:

Messrs. O. P. Van Sweringen (Chairman)
L. W. Baldwin
Leonard P. Ayres
Darwin S. Barrett, Jr.
Henry G. Dalton
W. W. Reilley
Finley J. Shepard
John Sherwin, Jr.
George A. Tomlinson

Herbert Fitzpatrick (Vice-President—Law and Corporate Relations)
Wm. Wyer (Secretary)

Pledge of Collateral as Security for Loan to International-Great Northern Railroad Company by The Railroad Credit Corporation

The Chairman stated that International-Great Northern Railroad Company, a subsidiary of this Company, in June, 1932 received from The Railroad Credit Corporation a loan of $750,000., and that the Credit Corporation had requested among other things the pledge of this Company's Distributive Share in the Marshalling and Distributing Plan, 1931, as partial security for the loan. Resolutions authorizing the execution and delivery of an agreement including such pledge were adopted on June 14th and the agreement executed June 27th.

The Chairman further stated that the International-Great Northern will require an additional loan of not to exceed $400,000. in order to meet its January 1st interest obligations; that application for this loan was made to the Credit Corporation on its behalf on December 7, 1932; and that the International-Great Northern has requested that in the event this application is approved by the Credit Corporation, this Company pledge $822,300. principal amount of International-Great Northern Railroad Company's Adjustment Mortgage Six Per Cent. Gold Bonds now held unpledged in its Treasury, and repledge its Distributive Share in the Marshalling and Distributing Plan, 1931, as partial security for the payment of the note evidencing this loan.

[fol. 159] Whereupon, on motion duly seconded, the following preambles and resolutions were unanimously adopted:

Whereas, this Company has pledged the amounts due or to become due to it as a participating carrier in distribution from time to time, and in final liquidation, of the Marshalling and Distributing Plan, 1931, with The Railroad Credit Corporation as partial security for a loan of $750,000. to its subsidiary, International-Great Northern Railroad Company made June 27, 1932, said pledge being evidenced by an agreement among Missouri Pacific Railroad Company, this Company, International-Great Northern Railroad Company, and The Railroad Credit Corporation of the same date; and

Whereas, International-Great Northern Railroad Company has applied to The Railroad Credit Corporation for an additional loan of not to exceed $400,000. in order to meet its January 1, 1933, interest obligations; and

Whereas, said International-Great Northern Railroad Company has requested that, in the event its application is approved by The Railroad Credit Corporation, this Company repledge its said Distributive Share, and also pledge or hypothecate $822,300. principal amount of International-Great Northern Railroad Company's Adjustment Mortgage Six Per Cent. Gold Bonds now held unpledged

in its Treasury, as partial security for the payment of the note, in form submitted to this meeting, evidencing said loan of not to exceed $400,000.;

Now, Therefore, be it

Resolved, that O. P. Van Sweringen, Chairman of the Board, or Wm. Wyer, Treasurer, of this Company, is hereby authorized and directed, on behalf of this Company, to repledge the amount due or to become due to this Company as a participating carrier in distribution from time to time, and in final liquidation, of the Marshalling and Distributing Plan, 1931, and also, subject to the approval of the Interstate Commerce Commission to pledge or hypothecate $822,300. principal amount of International-Great Northern Railroad Company's Adjustment Mortgage Six Per Cent. Gold Bonds now held unpledged in the Treasury of this Company, with The Railroad Credit Corporation as partial security for the payment of a note evidencing a loan of not to exceed $400,000. to International-Great Northern Railroad Company; provided, however, that before making such pledge, hypothecation, or repledge, this Company shall have received an agreement of indemnity, in form approved by counsel, executed on behalf of International-Great Northern Railroad Company by the proper officers thereof, agreeing that it will indemnify, reimburse, protect and save harmless this Company from any loss, cost, damage or expense whatsoever which it may sustain, suffer or be subject to on account of the pledge, hypothecation or repledge of security contemplated in these resolutions.

Resolved, that this Company make, in form approved by counsel, application to the Interstate Commerce Commission for authority to pledge and repledge from time to time with The Railroad Credit Corporation, as partial collateral security for a loan or loans made or to be made by said The Railroad Credit Corporation to this Company or to International-Great Northern Railroad Company, a subsidiary of this Company, $822,300. principal amount of International-Great Northern Railroad Company's Adjustment Mortgage Six Per Cent. Gold Bonds, Series A, constituting all of said bonds acquired by this Company pursu-

ant to the guarantee and option authorized in the order of the Interstate Commerce Commission entered December 10, 1924, in Finance Docket No. 3479; and that O. P. Van Sweringen, Chairman of the Board of Directors, L. W. Baldwin, President, Herbert Fitzpatrick, Vice-President—Law and Corporate Relations, and Wm. Wyer, Treasurer, or any of them, be, and he hereby is, designated [fol. 160] as the executive officer to sign, verify and file such application and exhibits, and to prepare, sign, verify and file any other application or applications, with such changes, modifications and alterations therein as may be necessary to meet the requirements of the Interstate Commerce Commission and other necessary public authorities and as shall be approved by counsel for this Company, and to take such other action in connection therewith as he may deem requisite or expedient; and

Resolved, that the Chairman of the Board, or the Treasurer, is hereby authorized and directed to execute any and all papers, and to do any and all things, which in his opinion may be necessary or proper for carrying out and effecting the purposes of these resolutions; and

Resolved, that all action heretofore at any time taken by the officers, representatives and agents of this Company, in respect to the matters and things hereinabove referred to, be, and the same hereby is, authorized, approved, ratified and confirmed.

[fol. 161] Comstock Exhibit 106.

Excerpts from minutes of Executive Committe of New Orleans, Texas & Mexico Railway Company held March 31, 1933.

New Orleans, Texas & Mexico Railway Company

Minutes of meeting of Executive Committee held at office of the Company, No. 3600 Terminal Tower, Cleveland, Ohio, at 10:05 o'clock A. M., March 31, 1933, pursuant to due notice.

Present:

Messrs. O. P. Van Sweringen (Chairman)
John Sherwin, Jr.
George A. Tomlinson

W. W. Reilley (Director)
Andrew P. Martin (of Counsel)
Wm. Wyer (Secretary)

Mr. W. W. Reilley was appointed to serve as a member of the Committee at this meeting.

Petition to Federal Court

The Chairman presented to the Committee a statement prepared by the Treasurer of the amounts which will be due on April 1, 1933, consisting of interest on this Company's First Mortgage Bonds, due April 1, 1933, aggregating approximately $791,062.50.

The Chairman stated that the Company is without funds to pay this indebtedness, and is unable to borrow or otherwise procure such funds; that in the circumstances he recommends for consideration that the proper officers of this Company be authorized to file on its behalf in the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, a petition under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, stating this Company's inability to pay its debts as they mature, and its desire to obtain the

benefits of said Section 77 by effecting a plan of reorganization in connection with, and as a part of, the plan of reorganization of Missouri Pacific Railroad Company which is about to file a similar petition in said Court.

Whereupon, after full discussion, on motion duly made, seconded and unanimously carried, the following resolutions were adopted:

Whereas, this Company is presently unable to meet its debts as they mature, and in the opinion of this Committee it is necessary that this Company effect a plan of reorganization in connection with and as a part of the plan of reorganization proposed to be effected by its proprietary company, Missouri Pacific Railroad Company, in accordance with Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy by the filing of an appropriate petition for that purpose in the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

[fol. 162] Now, Therefore, Be It Resolved, that the President or any Vice-President of this Company be and he is hereby authorized and directed on behalf of this Company to sign and/or verify and file with the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, a petition substantially in the form of the petition submitted to this meeting, or one having similar effect, with such changes in form or substance as may be made by any such officer upon advice of counsel, and to cause a copy thereof to be filed with the Interstate Commerce Commission; and

Resolved, that the officers of this Company be and they are hereby authorized and directed to execute any and all documents and to do and perform any and all acts or things necessary or proper to carry out the purpose and intent of these resolutions.

[fol. 163] Comstock Exhibit 107.

(Copy of a letter (not a carbon copy) attached to File #1340 "Declaration of Dividend on Capital Stock", in office of the President, Mo. Pac. R. R. Co.)

Mr. Baldwin: With further reference to my letter of July 1st in the matter of the St. L. B. & M. Board declaring a dividend to take care of the Profit and Loss Account of the N. O. T. & M.

Confirming Mr. Anderson's telephone conversation, we have arranged for a special meeting of the St. L. B. & M. Board Saturday morning, July 11th, for the purpose of passing a resolution declaring a dividend to the extent mentioned in our previous discussion of this matter. A copy of the minutes of this meeting will be forwarded to you promptly.

You will find enclosed a set-up of our Gulf Coast Lines Profit and Loss Account with adjustments for depreciation on equipment as of May 31st, 1931 with a foot-note outlining the effect of accounting to be recorded in June for the dividends declared at the meeting of the St. L. B. & M. Board on June 17th, 1931.

(signed) H. R. SAFFORD

Copy to Mr. Johnson.

[fol. 164] Comstock Exhibit 108.

Schedule of Dividends Declared by New Orleans, T & M Beginning January 1, 1925.

Date of Declaration	Rate of Dividend	For Quarter Ending
1-27-25	1¾%	2-28-25
4-29-25	"	5-31-25
7-28-25	"	8-31-25
10-27-25	"	11-30-25
1- 5-26	"	2-28-26
4-26-26	"	5-31-26
8- 3-26	"	8-31-26
11- 4-26	"	11-30-26
1-25-27	"	2-28-27
4-26-27	"	5-31-27
7-26-27	"	8-31-27
11- 1-27	"	11-30-27
1-31-28	"	2-29-28
4-24-28	"	5-31-28
7-31-28	"	8-31-28
10-23-28	"	11-30-28
1-15-29	"	2-28-29
4-16-29	"	5-31-29
7-23-29	"	8-31-29
10-22-29	"	11-30-29
1-21-30	"	2-28-30
4-15-30	"	5-31-30
7- 8-30	"	8-31-30
10-18-30	"	11-30-30
1-22-31	"	2-28-31
4-14-31	"	5-31-31
7-14-31	"	8-31-31
10-13-31	"	11-30-31

Note: The foregoing was compiled from the minute books of the New Orleans, Texas & Mexico Railway furnished by the Trustee's counsel.

The declarations of dividends were variously made either by the Board of Directors or by its Executive Committee.

Prior to July 8, 1930, meetings of the Board of Directors and of its Executive Committee were stated as held at 120 Broadway, New York City. Beginning July 8, 1930, such meetings were held at No. 3500 Terminal Tower, Cleveland, Ohio.

[fol. 165] Comstock Exhibit 109.

Article V—Section 11. Except in the cases in this indenture expressly authorized, the Railway Company will not sanction or permit any increase of the capital stock of any controlled company of the Railway Company, or the issue of any additional shares of the capital stock of any such company, or (except (1) current operating accounts for a period not at any date exceeding six months next prior to such date; (2) obligations issued for the purchase price of equipment secured by an instrument of trust or conditional sale relating only to such equipment; (3) bonds or obligations issued pursuant to the provisions of Section 8 of Article Six hereof; (4) mortgages or other liens created to secure any bond or obligations of the character specified in the foregoing subdivisions (2) and (3); or (5) instruments of further assurance or security required by a mortgage, or deed of trust, upon some part of the property of such company) the issue of any bonds by any such company, or the creation of any other indebtedness by any such company, or the creation of any mortgage or other lien upon the railroad or railroad property of any such company, unless simultaneously there shall be made effective provision that such indebtedness and the evidences thereof, and such bonds issued and such mortgage or other lien (unless it be a mortgage or a deed of trust to a trustee to secure bonds or other obligations), and all such additional stock (or such part of such additional stock as shall be proportionate to the part of the outstanding capital stock of such company previously subject to this indenture) forthwith, upon the issue or creation thereof, shall be assigned to the Trustee on the trusts of this indenture, and (except so far as the same may, by the terms of some prior indenture under which the existing stock of such company shall be pledged, be required to be delivered to the trustee or trustees under such prior indenture), be delivered to the Trustee, and be made subject to all the [fol. 166] trusts of this indenture; and all such additional stock shall be fully paid and be non-assessable. Except as aforesaid, if any such company shall issue any capital stock in addition to that now outstanding, or shall issue any bond or obligation or evidence of indebtedness, then

the Railway Company will cause all such additional stock and all such bonds, obligations and evidences of indebtedness forthwith to be assigned to the Trustee, and will cause certificates for such stock and such bonds, obligations or evidences of indebtedness to be delivered to the Trustee, to be held subject to the trusts of this indenture; and all such additional stock shall be fully paid and be non-assessable; and if any such company shall make default in the payment of any indebtedness incurred by it, then the Railway Company promptly will acquire the same and will assign the same to the Trustee, or will cause the same to be paid, satisfied or discharged, or make adequate provision for the payment, satisfaction or discharge thereof.

Any and all shares of the capital stock of any controlled company which the Railway Company hereafter may acquire shall, on the acquisition thereof by the Railway Company forthwith be and become subject to this indenture.

Except in the cases in this indenture expressly authorized, the Railway Company will not sanction or permit any of the controlled companies of the Railway Company to sell, or otherwise to dispose of, its railroad, or any part thereof, except to the Railway Company, or to some other controlled company of the Railway Company.

Except in the cases in this indenture expressly authorized, the Railway Company will not sanction or permit any controlled company of the Railway Company to lease its railroad property, or any part thereof, except to the Railway Company, or to some controlled company of the Railway Company, unless such lease be upon the condition [fol. 167] that it shall terminate at the election of the Trustee by entry or otherwise, in case of the happening of some one or more of the events of default specified in Section 2 of Article Seven hereof, and in case of a sale of the property subject to this indenture in enforcement of this indenture, at the election of the purchaser.

First Mortgage Dated April 1, 1924

New Orleans, Texas & Mexico Railway Company

to

Irving Bank-Columbia Trust Company, Trustee

Number 555 New Orleans, Texas & Mexico Railway Co

Minutes

January 17, 1921 to January 19, 1925

Comstock Exhibit 110.

Journal Entry No.	Date	Issued per 7% S.F. Notes	See Note	Cash
				$
15	June 1924			
4	Dec. "	4,680,000.00		
5	" "	1,231,920.00		
		5,911,920.00		
15	Jan. 1925	2,077,680.00		
		7,989,600.00		
1	" "	[illegible]		
4				
4				
4				
4				
4				
4				
4				
4				
4	July "			[illegible] 948.80
4	Aug. "			1,127,099.87 [illegible]
5	April 1932			1,128,988.07 78.00
		15,792,600.00		1,129,066.07

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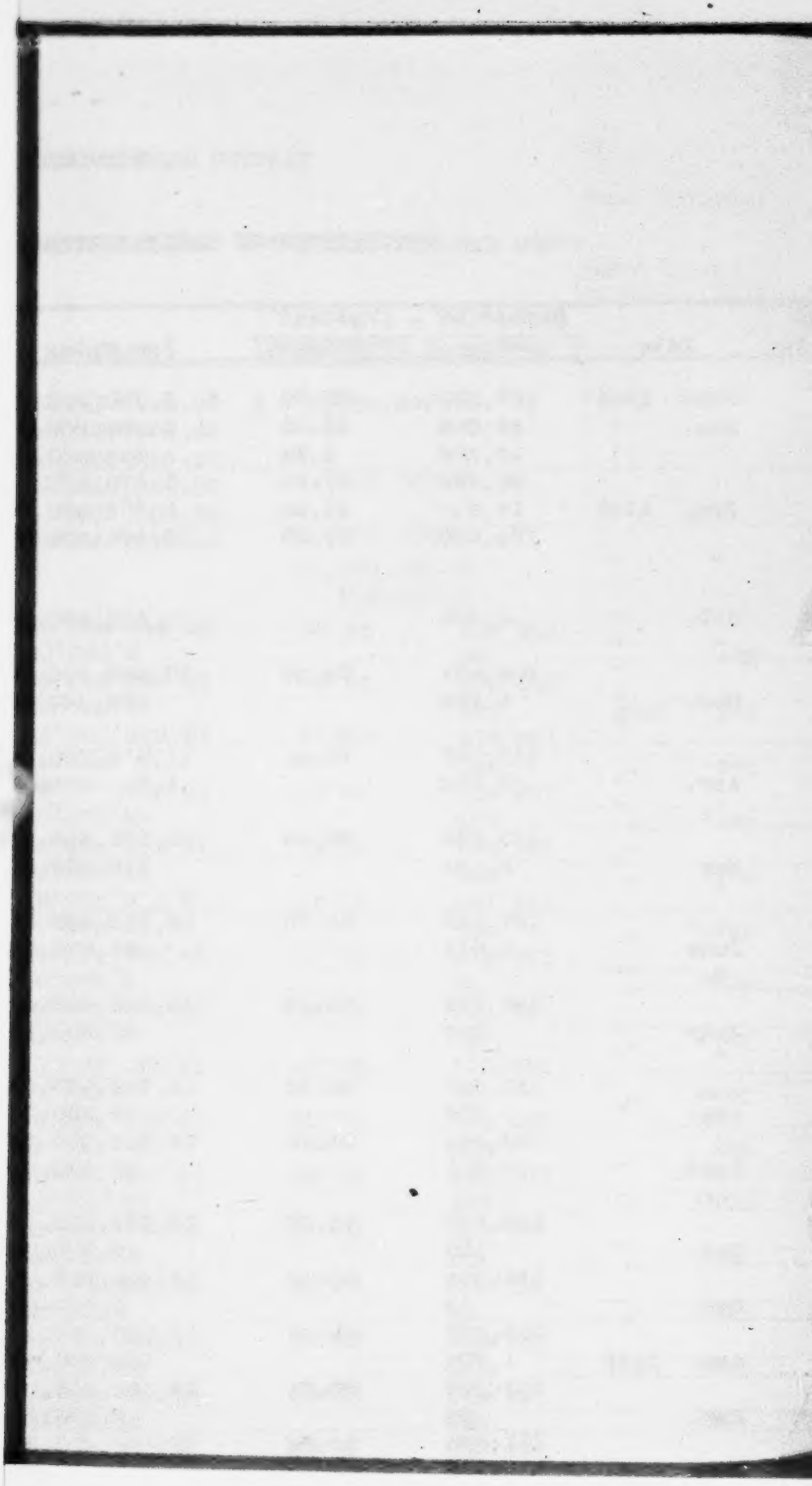

[fol. 169] **Comstock Exhibit 111.**

New Orleans, Texas & Mexico Ry. Co.

Analysis of Account 717, Interest and Dividends Receivable as of December 31, 1932.

Balance of $3,500,000.00 StLB&M Dividend Dec. 31, 1932...		$1,400,000.00
Interest on $12,913,341.98, St.LB&M First Mortgage 6% Bonds, month of December 1932.....		64,566.71
Interest on $2,057,824.74, BSL&W First Mortgage 6% Bonds, months of November and December 1932.....		20,578.24
Interest on $1,066,946.51, O&NW First Mortgage 6% Bonds, January 1, 1919 to December 31, 1932.....		896,235.03
Interest on $4,413,000.00 SAU&G First Mortgage 5% Bonds, Aug. 1, 1928 to Dec. 31, 1932.....		274,537.50
Interest on $384,000.00 Sugar Land Ry. Co. First Mortgage 5% Bonds, months of November and December 1931....		2,200.00
Interest on $850,000.00 Houston North Shore Ry. Co. First Mortgage 6% Bonds, months of November and December 1931		8,500.00
Interest on $1,000,000.00 H&BV First Mortgage 5% Bonds, July 1, 1932 to December 31, 1932.....		25,000.00
Interest on $822,300.00 I-GN Adjustment Mortgage 6% Bonds, July 1, 1930 to April 30, 1931.....		41,115.00
Interest on Advances to Texas City Terminal Ry. Co.:		
91,666.66 at 6% 11/1/28 to 12/31/32.....	22,000.00	
136,976.00 at 6% various dates 1929 to 12/31/32	29,552.31	
19,720.68 at 6% 8/1/30 to 12/31/32.....	2,859.46	
10,000.00 at 6% March to June 17, 1931.....	141.28	54,553.05
Interest on $5,000.00 HB&T First Mortgage 6% Bonds, July 1, 1932 to Dec. 31, 1932.....		300.00
Interest on Time Deposit Calcasieu Nat'l. Bank, Lake Charles, La., $5,000.00 at 4% July 9, 1932 to Dec. 31, 1932		98.87
Total.....		$2,488,584.40

[fol. 170] Comstock Exhibit 112.

Excerpt from Minutes of Meeting of Board of Directors of New Orleans, Texas & Mexico Railway Company held February 16, 1917.

President J. S. Pyeatt offered the following resolution, which, upon motion duly made and seconded, was unanimously adopted each Director present voting therefor; said preamble and resolution being as follows:

Whereas, New Orleans, Texas & Mexico Railway Company owns all of the bonds of the Beaumont, Sour Lake & Western Railway Company and of The Orange & Northwestern Railroad Company; and

Whereas, New Orleans, Texas & Mexico Railway Company likewise owns all of the Capital stock of the other two Railroad Companies above named; and

Whereas, certain large amounts of interest on the bonds of said Railroad Companies have accrued up to and including the 1st day of November, A. D., 1916, which neither of said Companies is able to pay; and

Whereas, it is deemed advisable for New Orleans, Texas & Mexico Railway Company to cancel and waive the obligation of said Companies, respectively, to pay the interest so matured on their respective bonds up to November 1st, 1916, for the purpose of bettering the financial standing of said companies, respectively;

Now, Therefore, Be It Resolved by the Board of Directors of New Orleans, Texas & Mexico Railway Company that the obligation of the Beaumont, Sour Lake & Western Railway Company and of the Orange & Northwestern Railroad Company, respectively, to pay the interest on their respective bonds maturing for the year ending the 1st day of November, A. D., 1916, is hereby waived, cancelled, and in all things annulled, so that neither of said Companies shall hereafter be required to pay the interest so maturing on their respective bonds, or any part thereof;

Be It Further Resolved, that the proper officers of this Company be, and they are hereby, directed to notify the Columbia Trust Company of New York, the Trustee under the First Mortgage of this Company, by the terms of which the bonds above described, issued by the Beaumont, Sour Lake & Western Railway Company and the Orange & Northwestern Railroad Company, are pledged to secure the payment of the First Mortgage Bonds of this Company, that all of the interest on said bonds maturing up to and including November 1st, 1916, has been waived, forgiven and cancelled, and requesting the said Columbia Trust Company to make endorsement upon said bonds accordingly.

[fol. 171] Comstock Exhibit 113.

Excerpts from Minutes of Meeting of Board of Directors of The St. Louis, Brownsville and Mexico Railway Company held April 29, 1924.

Minutes of Special Meeting of Board of Directors of the St. Louis, Brownsville and Mexico Railway Company Held in Houston, Texas, April 29th, 1924.

Be It Remembered: That on this the 29th day of April A. D. 1924, a special meeting of the Board of Directors of The St. Louis, Brownsville and Mexico Railway Company, a corporation created and existing under the laws of the State of Texas, was held in the Company's office in Houston, Texas, at three o'clock in the afternoon. At said meeting the following Directors of the Company, being a majority of all of the Company's directors and a quorum of said Board of Directors, were present, to-wit:

Mr. J. S. Pyeatt
Mr. M. Eckert
Mr. W. G. Choate
Mr. J. E. Anderson
Mr. A. B. Pierce

Thereupon, the Chairman announced it was the wish of the Company that all interest not heretofore paid on the outstanding bonds of this Company be paid as promptly as possible. Whereupon, Director A. B. Pierce offered and moved the adoption of the following resolution:

Resolved: That all interest on the outstanding bonds of this Company not heretofore paid be, and the same shall forthwith be paid out of any funds of this Company available therefor, such payment to include all interest which accrued prior to March 1, 1916, as well as subsequent to said date, and to be payable to the New Orleans, Texas & Mexico Railway Company as sole owner of said bonds.

The foregoing resolution, having been duly considered, and the motion to adopt same duly put, the said motion was unanimously carried, all of the Directors present voting in favor of said resolution, and said resolution was thereby unanimously adopted.

The Chairman then laid before the meeting the following resolution:

Resolved: That a dividend is hereby declared upon the Capital Stock of this Company in an amount equal to all the surplus earnings of this Company from the 1st day of March, 1916 to the 1st day of March, 1924, which has not heretofore been so appropriated as now to be properly included in Capital Account, and which now remains legally applicable to the payment of dividends.

On motion duly made by Director A. B. Pierce and seconded by Director W. G. Choate, the resolution was adopted.

[fol. 172] Comstock Exhibit 114.

Excerpts from Minutes of Meeting of Board of Directors of The St. Louis, Brownsville and Mexico Railway Company held June 10, 1924.

Minutes of Special Meeting of Board of Directors of the St. Louis, Brownsville and Mexico Railway Company Held at Houston, Texas, June 10th, 1924.

Be It Remembered that on Tuesday, the 10th day of June, A. D. 1924, there was held in the General Offices of The St. Louis, Brownsville and Mexico Railway Company, in the City of Houston, in Harris County, Texas, a special meeting of the Board of Directors of said Company, at which the following Directors were present, to-wit:

J. S. Pyeatt
Frank Andrews
J. E. Anderson
W. G. Choate
M. Eckert

The following resolution was then presented to the meeting by Mr. Frank Andrews:

Resolved:

That the action of the Officers of this Company in paying to the New Orleans, Texas & Mexico Railway Company, the sole stockholder of this Company, except for qualifying Directors' shares, the dividend declared at the meeting of this Board held April 29th, 1924 by crediting to the account of the said New Orleans, Texas & Mexico Railway Company, on the books of this Company, the sum of $654,911.40, shall be and the same is hereby ratified, approved and confirmed.

Be It Further Resolved:

That the certificate of the Auditor of this Company dated May 12th, 1924 fixing the amount of said dividend at $654,911.40, and the execution of said certificate, and the use thereof as a basis for the credit aforesaid, shall be and the same are hereby ratified, approved and confirmed.

Be It Further Resolved:

That Whenever proper credits and/or funds are available for the discharge and satisfaction of said credit, the proper Officers of this Company are authorized and directed to apply the same to that purpose.

On motion, duly made, seconded and put, this resolution was unanimously adopted and so declared by the Chair.

[fol. 173] Comstock Exhibit 115.

Excerpts from minutes of Special meeting of Board of Directors of The Beaumont, Sour Lake & Western Railway Company held on April 29, 1924.

Minutes of Special Meeting of Board of Directors
of
The Beaumont, Sour Lake & Western Railway Company
Held in Houston, Texas
April 29th, 1924

Be It Remembered: That on this the 29th day of April, A. D. 1924, a special meeting of the Board of Directors of The Beaumont, Sour Lake & Western Railway Company, a corporation created and existing under the laws of the State of Texas, was held in the Company's office in Houston, Texas, at three o'clock in the afternoon. At said meeting the following Directors of the Company, being a majority of all of the Company's directors and a quorum of said Board of Directors, were present, to-wit:

Mr. J. S. Pyeatt
Mr. W. G. Choate
Mr. J. E. Anderson
Mr. M. Eckert
Mr. R. W. Wier

Thereupon, the Chairman announced it was the wish of the Company that all interest not heretofore paid on the

outstanding bonds of this Company be paid as promptly as possible. Whereupon, Director W. G. Choate offered and moved the adoption of the following resolution:

Resolved: That all interest on the outstanding bonds of this Company not heretofore paid be, and the same shall forthwith be paid out of any funds of this Company available therefor, such payment to include all interest which accrued prior to March 1, 1916, as well as subsequent to said date, and to be payable to the New Orleans, Texas & Mexico Railway Company as sole owner of said bonds.

The foregoing resolution, having been duly considered, and the motion to adopt same duly put, the said motion was unanimously carried, all of the Directors present voting in favor of said resolution, and said resolution was thereby unanimously adopted.

The Chairman then laid before the meeting the following resolution:

Resolved: That a dividend is hereby declared upon the Capital Stock of this Company in an amount equal to all the surplus earnings of this Company from the 1st day of March, 1916 to the 1st day of March, 1924, which has not heretofore been so appropriated as now to be properly included in Capital Account, and which now remains legally applicable to the payment of dividends.

[fol. 174] On motion duly made by Director J. E. Anderson and seconded by Director R. W. Wier, the resolution was adopted.

[fol. 175] Comstock Exhibit 116.

Excerpts from minutes of Board of Directors of The Beaumont, Sour Lake & Western Railway Company held on June 10, 1924.

Minutes of Annual Meeting of Board of Directors
The Beaumont, Sour Lake & Western Railway Company
Held at Houston, Texas
June 10th, 1924.

Be it Remembered, That pursuant to the By-Laws of the Company the annual meeting of the Board of Directors of The Beaumont, Sour Lake & Western Railway Company was held Tuesday, June 10th, 1924, in the General Offices of the Company in the City of Houston, Harris County, Texas, at which appeared and were present the following Directors:

J. S. Pyeatt
Frank Andrews
J. E. Anderson
W. G. Choate
M. Eckert

The following resolution was then presented to the meeting by Mr. Frank Andrews:

Resolved:

That the action of the Officers of this Company in paying to the New Orleans, Texas & Mexico Railway Company, the sole stockholder of this Company, except for qualifying Directors' shares, the dividend declared at the meeting of this Board held April 29th, 1924, by crediting to the account of the said New Orleans, Texas & Mexico Railway Company, on the books of this Company, the sum of $136,321.92, shall be and the same is hereby ratified, approved and confirmed.

Be It Further Resolved:

That the certificate of the Auditor of this Company dated May 12th, 1924, fixing the amount of said dividend

t $136,321.92, and the execution of said certificate, and the se thereof as a basis for the credit aforesaid, shall be and he same are hereby ratified, approved and confirmed.

fol. 176] Be It Further Resolved:

That whenever proper credits and/or funds are avail-ble for the discharge and satisfaction of said credit, the roper Officers of this Company are authorized and irected to apply the same to that purpose.

On motion, duly made, seconded and put, this resolution as unanimously adopted and so declared by the Chair.

[fol. 177] Comstock Exhibit 117.

St. Louis, Brownsville & Mexico Railway Company.

Executive Committee Meetings.

Date Held	Where
January 7, 1930	New York, N. Y.
March 4, 1930	"
March 14, 1930	"
April 29, 1930	"
July 8, 1930	Cleveland, Ohio
August 12, 1930	"
September 9, 1930	"
December 18, 1930	"
January 22, 1931	"
April 14, 1931	"
May 14, 1931	"
July 14, 1931	"
October 13, 1931	"
December 8, 1931	"
December 14, 1931	St. Louis, Mo.
February 9, 1932	Cleveland, Ohio
April 12, 1932	"
June 14, 1932	"
August 9, 1932	"
October 11, 1932	"
December 13, 1932	"
February 17, 1933	"
April 26, 1933	"
June 24, 1933	"
August 21, 1933	"
October 10, 1933	"
November 23, 1933	"
February 14, 1934	"
May 21, 1934	"
August 29, 1934	"
January 22, 1935	"
March 10, 1936	"
May 26, 1936	"
August 11, 1936	"
April 6, 1937	"
May 20, 1937	"

Comstock Exhibit 118.

Voucher Number	Date		ipment nts	Equipment Repairs	Interest and Dividends
F-1710	May	1928		$	$
F-1861	October	"			
F-1[illegible]	November	"			
F-1905	December	"			
	Total	1928			
F-19[illegible]	February	1929			
F-1[illegible]					
F-2[illegible]					
F-2[illegible]					
F-2[illegible]					
F-2[illegible]					
F-2[illegible]					
F-2[illegible]					
F-2[illegible]					
F-2[illegible]					
F-2[illegible]					
F-[illegible]					
F-[illegible]					
F-[illegible]					
F-[illegible]					
F-114721					
F-114830	November	"	7,089.10		
F-114840	"	"			
F-114856	"	"			
F-115839	December	"	3.72		
F-115845	"	"			
F-115847	"	"			
F-115833	"	"	7,089.10		
	Total	1932	0,894.72		75,656.71
	Grand Total		6,125.09	$68,315.49	$730,736.44

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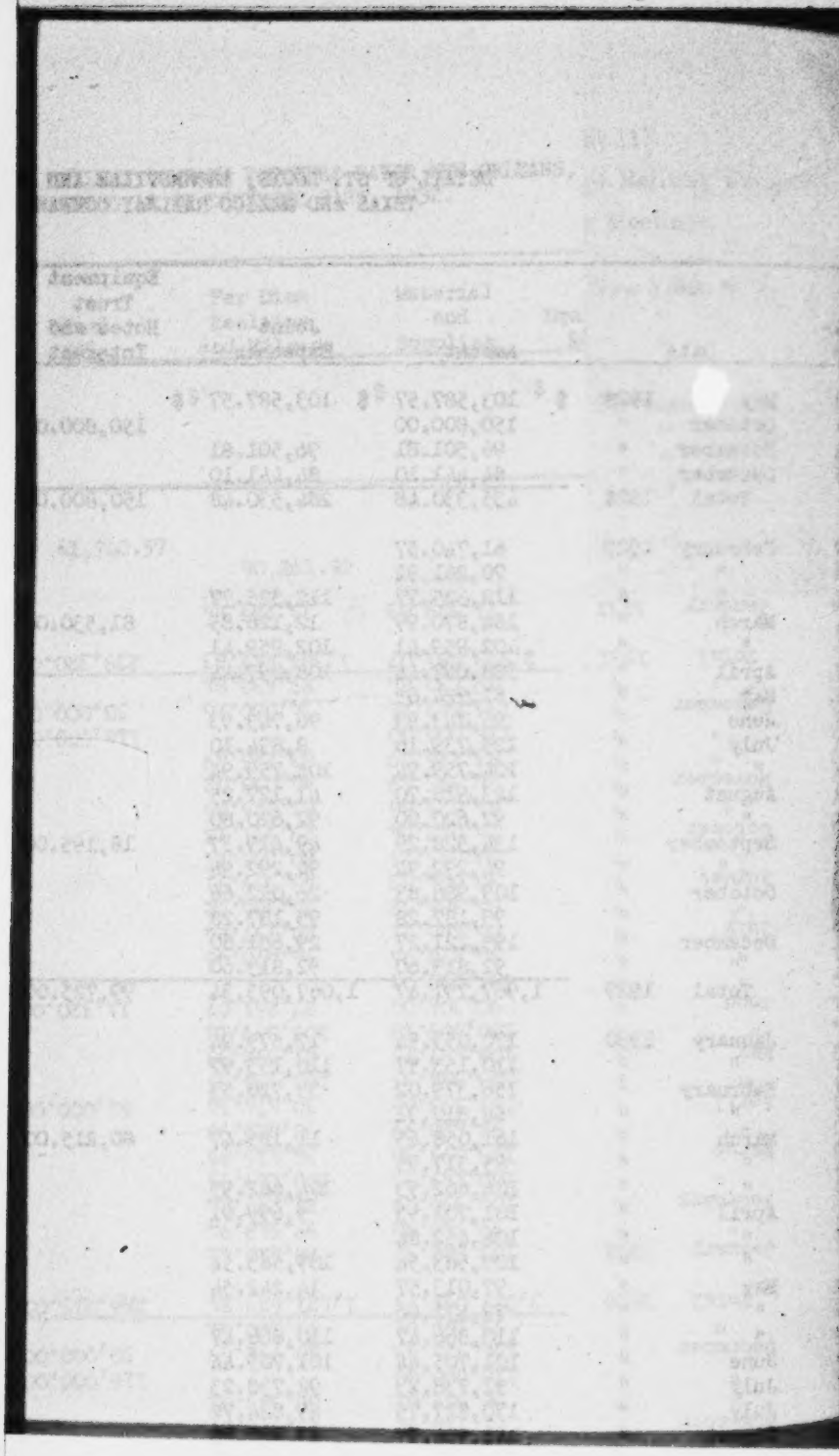


[fol. 179] Comstock Exhibit 119.

Detail of Beaumont, Sour Lake & Western Railway Company. Vouchers Favor New Orleans, Texas & Mexico Railway Company Outstanding as of December 31st, 1932.

Voucher No.	Date	Amount	Joint Expense	Equipment Rent	Per Diem
F 1840	July 1928	$ 87,494.15	$ 87,494.15	$	$
F 1878	Sept. "	88,138.24	88,138.24		
F 1931	Oct. "	96,266.49	96,266.49		
	Total	$ 271,898.98	$ 271,898.98		
F 1950	Jan. 1929	$ 109,340.14	$ 109,340.14		
F 1976	Mar. "	110,065.91	110,065.91		
F 2031	Apr. "	109,478.23	109,478.23		
F 2055	June "	95,528.37	95,528.37		
F-2042	July "	91,283.73	91,283.73		
F 2071	Aug. "	89,541.87	89,541.87		
F 2064	Sept. "	90,145.19	90,145.19		
F 2087	Oct. "	96,784.87	96,784.87		
F 2072	Nov. "	89,639.20	89,639.20		
	Total	$ 882,226.50	$ 882,226.50		
F 2088	Jan. 1930	$ 105,255.28	$ 105,255.28		
F 2116	Mar. "	104,250.11	104,250.11		
F 2163	Apr. "	107,879.54	107,879.54		
F 2146	May "	97,249.97	97,249.97		
F 2175	June "	89,751.00	89,751.00		
F 2176	July "	95,485.96	95,485.96		
F 2189	Aug. "	81,914.40	81,914.40		
F 2199	Oct. "	89,078.29	89,078.29		
F 2217	Dec. "	85,103.17	85,103.17		
	Total	$ 855,967.72	$ 855,967.72		
F 2226	Jan. 1931	$ 78,905.12	$ 78,905.12		
F-2233	Feb. "	77,467.25	77,467.25		
F 2250	Mar. "	84,099.03	84,099.03		
F 2253	Apr. "	91,073.87	91,073.87		
F 2266	May "	90,306.38	90,306.38		
F 2273	June "	76,383.44	76,383.44		
F 2280	July "	71,387.50	71,387.50		
F 2285	Aug. "	68,240.46	68,240.46		
F 2292	Sept. "	63,243.91	63,243.91		
F 2303	Oct. "	66,263.44	66,263.44		
F 2304	Nov. "	63,934.87	63,934.87		
F 2317	Dec. "	65,005.81	65,005.81		
	Total	$ 896,311.08	$ 896,311.08		
F 2322	Jan. 1932	$ 63,124.03	$ 63,124.03	$	$
F 2329	Feb. "	59,137.61	59,137.61		
F 2336	Mar. "	60,234.57	60,234.57		
F 2337	Apr. "	61,243.74	61,243.74		
F 2346	May "	53,759.08	53,759.08		
F25927	Aug. "	44,412.85	44,412.85		
F26143	Oct. "	44,487.74	44,487.74		
F25264	Nov. "	46,700.00	46,700.00		
F24403	Dec. "	70,846.96	54,595.62	1,151.41	15,099.93
F26411	Dec. "	48,552.56	48,552.56		
F25038	Sept. "	43,620.38	43,620.38		
	Total	$ 596,109.52	$ 579,858.18	$1,151.41	$15,099.93
	Grand Total	$3,502,613.80	$3,486,362.46	$1,151.41	$15,099.93

Detail of New Orleans, Texas and Mexico Bonds Outstanding—December 31, 1942.

Series A 5½s A. & O. 1954			Series B 5s A. & O. 1954			Series C 5s F. & A. 1954			Series D 4½s F. & A. 1954			Balance Series A Income Bonds Due 12-1-55	Total Funded Debt
Year Issued	Amount (Par Value)	Total Outstanding	Year Issued	Amount (Par Value)	Total Outstanding	Year Issued	Amount (Par Value)	Total Outstanding	Year Issued	Amount (Par Value)	Total Outstanding		
1924	$10,518,000	$	*Various	$10,164,900	$	1926	$ 4,600,000	$	1926	$ 5,900,000	$	$	$
1925	2,752,000		† 1924	981,000									
1926	1,500,000	15,770,000	1925	3,200,000	14,345,900			4,600,000			5,900,000	2,354,100	42,970,000

* Exchanged for Income Bonds held by public

† Exchanged for Income Bonds held by Company in Treasury

Sales of Funded Debt 1924-1932 by Years Showing Funds Realized and Purpose of Issue (Exclusive of Equipment Trusts)

Year	Par Value	Series	Total For Year	To Whom, Price and When Authorized	Proceeds	Purpose of Issue
1924	$7,734,000	A 5½s	$	Blair & Co. 95 May 19, 1924	$ 7,347,300	$6,734,000.00 to retire $5,733,000 old First Mortgage 6's. 1,000,000.00 to provide in part for purchase of securities of Houston & Brazos Valley Ry. Co.
	2,784,000	A 5½s		Blair & Co. 95½	2,658,720	1,014,000.00 to be pledged in lieu of $948,500 old First Mortgage 6's (subq. released). 1,770,000.00 to provide in part for retirement of conditional sale purchase notes on equipment.
			10,518,000	Oct. 1, 1924		
1925	2,752,000	A 5½s		Kuhn Loeb & Co. 97 Mar. 18, 1925	3,639,440	2,752,000.00 to reimburse the treasury for capital expenditures made prior to April 1, 1924.
	981,000	B 5s		Kuhn Loeb & Co. 90 Mar. 18, 1925	882,900	981,000.00 to reimburse the treasury for N. O. T. & M. Ry. Co. 5% Income Bonds acquired by purchase for which an equal amount of Ser. "B" Bonds were issued.
	1,500,000	A 5½		Vendors Par Dec. 1, 1925	1,500,000	1,500,000.00 to provide in part funds for the acquisition of securities of San Antonio, Uvalde & Gulf R. R. Co., Asphalt Belt Ry. Co. and Live Oak Pipe Line.
	3,200,000	B 5s		Kuhn Loeb & Co. 93½	2,992,000	(1,700,000.00 to provide funds to purchase securities of Sugarland Ry. Co., Asherton & Gulf and Rio Grande City Ry. Co. (1,500,000.00 to provide funds as part consideration of purchase price of securities of S. A. U. & G. R. R., Asphalt Belt and Live Oak Pipe Line.
			9,433,000	Dec. 1, 1925		
1926	4,600,000	C 5s		Kuhn Loeb & Co. 97½	4,485,000	4,600,000.00 to reimburse the treasury in part for capital expenditures made to Dec. 31, 1926 and to be made during a portion of 1927.
			4,600,000	July 8, 1926		
1926	5,900,000	D 4½s		Kuhn Loeb & Co. 95¾	5,649,250 *	(1,890,000.00 to purchase securities of Houston North Shore Ry. (600,000.00 to purchase securities of San Antonio Southern Ry. (3,410,000.00 to reimburse treasury for Addition and Betterment expenditures.
			5,900,000	Nov. 29, 1927		
			$30,451,000		$29,154,610	

* Of the proceeds of this issue Cash Book shows that $3,130,000 was used to repay advances to Mo. Pac. and $1,415,000 used to repay loan from First National Bank, St. Louis.

[fol. 182] Comstock Exhibit 121.

			Difference Pd. in Cash
$ 100,000.00	Paid Sept. 10, 1926	Paid by Check 1383	$
222,719.32	" July 29, 1926	" " offset—Check destroyed	2.79
41,344.58	" Oct. 26, 1926	" " " Check 3120	373.92
180,617.20)	" June 5, 1928	" " " " 5903	541.80
229,306.79)	" " " "	" " " " "	"
6,531.89	" Aug. 8, 1927	" " even offset	
970,221.64	" Apr. 10, 1928	" " offset Check 5618	194.00
192,650.88	" June 20, 1930	" " even offset	
410,462.13	" Dec. 28, 1928	" " offset Check 6914	435.31
229,497.46	" July 24, 1929	" " " 2384	177.72
277,746.17	" Dec. 6, 1929	" " even offset	
533,727.20	" June 20, 1930	" " " "	
370,738.63	" June 19, 1931)	" " offset Check 4827	1,474.18
560,159.36	" " " ")		
500,000.00	" July 28, 1931	" " even offset	
300,000.00	" Sept. 10, 1931	" " " "	
100,000.00	" Sept. 21, 1931	" " " "	
100,000.00	" Dec. 30, 1931	" " " "	
500,000.00	" Mch. 30, 1932	" " " "	
500,000.00	" May 11, 1932	" " " "	
100,000.00	" Dec. 13, 1932	" " " "	
$6,434,722.75			

[fol. 183] Comstock Exhibit 122.

The St. Louis, Brownsville and Mexico Railway Company.

Statement Showing Cash Balances and Current Assets and Current Liabilities as of June 30 and July 31, 1931.

	June 30, 1931	July 31, 1931
Cash Balance	$ 97,287.39	$ 283,461.69
Current Assets	$1,057,084.55	$1,054,203.67
Current Liabilities	578,415.87	*3,611,764.59
Current Assets over Current Liabilities	$ 478,668.68	
Current Liabilities over Current Assets		$2,557,460.92

*Includes Dividends Matured Unpaid $3,000,000.00

Comstock Exhibit 123.

[fol. 185]

Comstock Exhibit 123.

New Orleans, Texas and Mexico Railway Company.

Analysis of Profit and Loss at Close of Years Shown, as Contained in Reports Submitted to Interstate Commerce Commission.

Particulars	December 31 1925	1926	1927	1928	1929	1930	1931	1932	Total
* Net income after fixed charges per Annual Reports filed with Interstate Commerce Commission	$ 837,288.00	$1,388,207.00	$ 909,961.00	$ 787,245.00	$1,149,196.00	$ 845,756.00	$3,542,545.00	$ †956,189.00	$8,460,197.00
Add: Credits made directly to Profit and Loss not included in Income Accounts.	2,393.00	5,599.58	27,137.90	4,713.00	4,061.54	8,363.71	5,922.80	4,581.24	62,792.77
Total Net Income and Credits to Profit and Loss	$ 839,679.00	$1,393,806.58	$ 937,098.90	$ 742,058.00	$1,153,257.54	$ 854,120.71	$3,564,467.80	$ †951,607.76	$8,522,919.77
Deduct: Dividends paid	$1,038,198.00	$1,038,198.00	$1,038,198.00	$1,038,198.00	$1,038,198.00	$1,038,198.00	$1,038,198.00	$	$7,267,386.00
Deduct: Charges made directly to Profit and Loss and not included in Income Accounts	332,113.00	211,047.87	65,633.84	273,809.73	25,460.73	27,721.80	900,129.68	33,902.77	1,864,108.42
Total Debits	$1,370,311.00	$1,249,245.87	$1,103,830.84	$1,312,007.73	$1,063,658.73	$1,065,919.80	$1,938,327.68	$ 33,902.77	$9,131,494.42
Balance	$ †530,632.00	$ 144,560.71	$ †166,731.94	$ †569,949.73	$ 89,598.81	$ †211,799.09	$1,616,160.12	$ †979,510.53	$ †608,574.65
* Balance at Beginning of Period	1,954,540.00	1,423,908.00	1,568,469.00	1,401,747.00	831,797.00	921,396.00	709,616.00	2,325,776.00	1,954,540.00
* Credit Balance in Profit and Loss at End of Period	$1,423,908.00	$1,568,469.00	$1,401,747.00	$ 831,797.00	$ 921,396.00	$ 709,616.00	$2,325,776.00	$1,345,965.00	$1,345,965.00

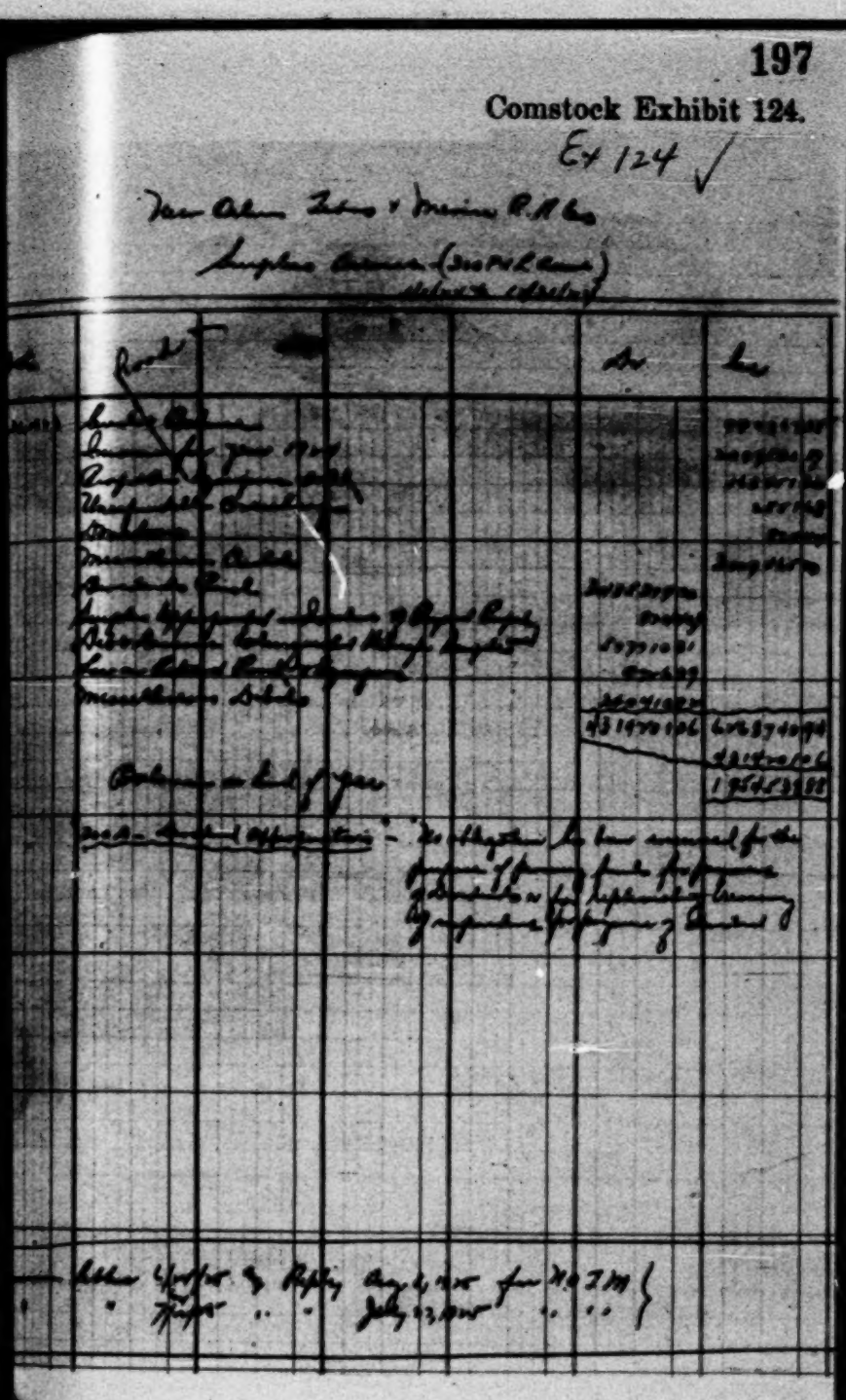
* Cents omitted.

† Denotes figures in red in original.

[illegible]

Comstock Exhibit 124.

Ex 124 ✓



[fol. 187]

Comstock Exhibit 125.

New Orleans, Texas & Mexico Railway Company.
Page 333, Schedule 396—Miscellaneous Items in Profit and Loss Account for Year 1924.

Sub. Acct. No. (a)	Item (b)		Debits (c)	Credits (d)
603	Profit on Road and Equipment Sold.....		$	$ 183,...
	Minor items 1 in number each less than $5,000	$ 403.30		
	Profit on refrigerator cars sold to Frisco Refrigerator Line (StL-SF Ry. Co.) as per sale contract dated Nov. 1, 1915 (See Note A)	183,048.10		
604	None			
606	Donations			
	Minor items 2 in number each less than $5,000			
607	Miscellaneous Credits			3,000,...
	Reversal of erroneous credit to Profit and Loss Account 607 in previous year (See Note B)	*98,715.94		
	Difference between par value and cost of 5% Non-Cumulative Income Bonds re-acquired and retired during the year..	109,686.00		
	Interest payments received on First Mortgage Bonds of affiliated companies, previously written off to Profit and Loss as follows:			
	The St. L. B. & M. Ry. Co. covering period 7-1-1912 to 5-31-1916.....	2,548,916.40		
	The B. S. L. & W. Ry. Co. covering period 11-1-1912 to 5-31-1916.....	440,409.22		
	Minor items 11 in number each less than $5,000	9,169.22		
619	Loss on Retired Road and Equipment.....		9,726.29	
	Minor items 6 in number each less than $5,000			
621	Miscellaneous Debits		240,410.92	
	Difference between par value and cost of First Mortgage 6% Bonds reacquired and retired 21,759.56			
	5% Premium on $1,052,000.00 Equipment Prior Lien Certificates 52,600.00	74,359.56		
	Unearned interest on old First Mortgage 6% Bonds (See Note C).....	153,437.62		
	Minor items 11 in number each less than $5,000	12,613.74		
	* Denotes figures in red in original.		$250,137.21	$3,173,...

Memoranda Relating to Income and to Profit and Loss Accounts.

Note A—Authorized thru letter Alex. Wylie, Director of Bureau Accts., I. C. C., dat... May 28, 1924.

Note B—Debit of $98,715.94 to Profit and Loss, Account 607, represents adjustment ... amount credited previous year covering difference between amounts allowed ... I. C. C. and the amounts collected in final settlement under Section 209 Tra... portation Act 1920, same being credited to Income Account 519; authority ... from Alexander Wylie, Director Bureau of Accounts, I. C. C., dated June 13, 19...

Note C—Debit of $153,437.62 to Account 621, Miscellaneous Debits, represents amount ... interest paid from June 1, 1924 to date of retirement of Old First Mortgage ... Bonds redeemed by Irving Bank—Columbia Trust Company, Trustee, out ... funds provided for redemption of principal and interest of such bonds. Th... amount also includes interest from June 1, 1924 to December 1, 1924. (See ... page 226)

New Orleans Texas & Mexico Railway Co

Summary of Dividend & Interest Income Accounts

January 1, 1945 to December 31, 1947

(Based on explanation of [illegible] from Annual Report Form [illegible])

Description	1945	1946	1947
Dividend Income from -			
St Louis Brownsville & Mexico R.R. Co	-	783987	976 2
Total for Period	-	783987	976 2
Interest Income from -			
St Louis Brownsville & Mexico R.R. Co Bonds	774801	774801	774 8
Brownsville Southern R.R. Co.	173469	173469	173 4
Orange & Northeastern R.R. Co	64016	64016	64 0
San Antonio Uvalde & Gulf R.R. Co		239027	270 6
Sugarland		19200	19 2
Houston & Brazos Valley			8 7 5
Houston North Shore			
Intracoastal Canal Ferry R.R. Co			2 5
Houston & Brazos Valley Misc			2749
Houston Belt & Terminal R.R. Co	400	400	4
Texas City Terminal			
Unidentified			
Total for Period	962686	1770924	1561 2

Comstock Exhibit 126.

1916	1917	1918	1919	1920	1921	1922
783987	976253	603114	1059970	930897	4155079	
783987	976253	603376	1049970	932897	4155079	—
774800	774800	774800	774800	774800	774800	774800
678241	678241	678241	678241	678241	678241	678241
64019	71019	71019	71019	64019	71019	71019
059022	059022	059022	059022	059022	059022	059022
19200	19200	19200	19200	19200	19200	19200
50000	50000	21000	19202	50000	50000	50000
51000	51000	25477	29718	51000	51000	51000
16447	28570	49644	49388	49388	16447	
		20189	06497			
400	400	400	400	400	400	400
14903	15043	1505	08746	13141	15043	14903
1318438	1335045	1314422	1401394	1367086	1335045	1318438

New Orleans Texas & Mexican Ry.

706. Investments in affiliated Companies

12/31/44

	Dec 31, 1944	Dec 31, 1943	Dec 31, 1942	Dec 31, 1941	Dec 31, 1940	Dec 31, 1939
Stocks	3,274,270 ✓	3,595,554 ✓	6,036,619 ✓	5,947,781 ✓	7,008,807 ✓	7,806,764
Bonds	17,515,181 ✓	20,635,790 ✓	20,854,889 ✓	21,517,017 ✓	19,403,844 ✓	19,993,840
Notes	938,524 ✓	927,628 ✓	906,006 ✓	906,000 ✓	906,000 ✓	—
Advances	213,683 ✓	2,059,670 ✓	1,013,913 ✓	2,108,346 ✓	1,488,554 ✓	1,629,707
	21,943,679 ✓	27,218,642 ✓	28,811,418 ✓	30,478,144 ✓	31,806,478 ✓	31,919,511
Advances →						
Houma Al Many & Eastern	(C) 198,818 ✓	198,818 ✓	198,818 ✓	198,818 ✓	198,818 ✓	198,818
Beaumont Sour Lake & Western	(C) 164,473 ✓	164,473 ✓	164,473 ✓	164,473 ✓		
	363,291 ✓					
Sabine Pass & Port Arthur Ry Co. advances						
Santa Maria Co. & Ry Co. Investments		485,968 ✓	500,995 98 ✓	500,995 98 ✓	814,268 31 ✓	869,143
Velasco Warf & Warehouse Co.		4,960 ✓	508,483 ✓	5,248 78 ✓	545,766 ✓	6,759
Rio Grande City Railway Co. advances and Contr.			29,592 78 ✓	29,592 78 ✓	29,592 78 ✓	29,592
Asphalt Belt Ry Co. - Investment Organization Expenses				3,750 00 ✓	3,750 ✓	3,750
San Benito & Rio Grande Valley Ry Co. Bonds, Stock & Advances				63,109 96 ✓		
Asherton & Gulf				3,000 00 ✓	3,000 ✓	
Beaumont Sour Lake & Western Ry Co. - Acquisition of Direct Valley Branch, Houston North Shore Ry Co.				903,735 34 ✓		
Texas City Terminal Ry. - Advances for Capital Stock						
Terminal Investment Fund Co.				(C) 9,111,777 ✓	9,111,777 ✓	7,784

Comstock Exhibit 127.

San Antonio Uvalde & Gulf R.R. Co.
Sregor Land Ry Co.
Orange & Northwestern Ry Co.
Railroad Lands Leased
San Antonio Southern Ry Co.

(1) No Defense Named on this answer
(2) Defense Named on this answer

215743 ✓	78596 ✓	10139176 ✓	1083 ✓	1428 ✓	16 ✓	

Comstock Exhibit 127.

[fol. 191] **Comstock Exhibit 128.**

New Orleans, Texas & Mexico Ry. Co.

Family Lines bills due from St. L. B. & M. Ry. Co. still unpaid as of April 1, 1933, also showing vouchers audited during period Jan. 1, 1928 to Dec. 31, 1932 that were paid.

Year	Month	Family Lines Vouchers Audited—Amount	Unpaid as of April 1, 1933
1928	Jan.	526,845.90	.....
	Feb.	357,785.13	.....
	Mar.	478,103.24	.....
	Apr.	371,591.99	.....
	May	335,834.44	103,587.57
	June	372,828.64	.....
	July	367,181.41	.....
	Aug.	372,462.71	.....
	Sept.	249,872.37	.....
	Oct.	306,441.06	150,800.00
	Nov.	297,973.55	96,501.81
	Dec.	352,472.80	84,441.10
		4,589,393.34	435,330.48
1929	Jan.	524,391.09	.....
	Feb.	319,410.13	244,238.36
	Mar.	442,092.76	367,830.40
	Apr.	417,319.53	108,097.44
	May	306,412.43	61,724.63
	June	556,576.30	96,748.93
	July	268,011.85	230,499.10
	Aug.	260,929.60	236,537.50
	Sept.	256,945.25	228,821.23
	Oct.	928,508.01	205,174.11
	Nov.	334,630.60	.....
	Dec.	310,971.25	288,034.87
		4,932,198.79	1,967,791.47

[fol. 192]

1930	Jan.	372,337.63	280,207.91
	Feb.	338,447.89	231,189.93
	Mar.	421,200.87	351,039.23
	Apr.	397,122.43	315,739.31
	May	352,911.24	287,311.70
	June	646,517.51	101,705.44
	July	237,483.49	263,555.98
	Aug.	243,666.59	237,166.59
	Sept.	203,181.96	201,842.50
	Oct.	241,184.46	223,611.29
	Nov.	356,234.01	286,097.63
	Dec.	855,693.31	257,635.14
		4,660,081.38	3,037,092.75

1921	Jan.	214,290.58	206,421.28
	Feb.	206,221.73	200,590.04
	Mar.	202,230.23	203,116.35
	Apr.	221,043.53	264,943.61
	May	229,000.00	200,116.23
	June	249,236.23	239,254.69
	July	156,536.55	153,252.73
	Aug.	175,699.70	171,206.08
	Sept.	180,953.73	.....
	Oct.	173,206.06	187,883.59
	Nov.	221,211.47	203,231.99
	Dec.	229,519.05	235,074.19
		2,384,996.53	2,323,661.97

[fol. 193]

1922	Jan.	169,289.49	159,596.97
	Feb.	157,298.85	157,285.55
	Mar.	157,414.77	156,299.13
	Apr.	220,506.19	204,537.13
	May	169,429.29	169,429.29
	June	136,481.73	136,183.04
	July	181,088.26	96,269.23
	Aug.	142,015.21	181,199.59
	Sept.	123,723.23	85,729.43
	Oct.	235,249.57	189,574.73
	Nov.	273,283.54	274,283.73
	Dec.	219,272.46	184,443.43
		2,181,211.73	1,937,661.98
Total 1-1-22 to 12-31-22..		19,577,861.11	10,211,337.75

[fol. 194] **Comstock Exhibit 129.**

New Orleans, Texas & Mexico Ry. Co.

Family Lines bills due from B. S. L. & W. Ry. Co. still unpaid as of April 1, 1933, also showing vouchers audited during period Jan. 1, 1928 to Dec. 31, 1932 that were paid.

Year	Month	Family Lines Vouchers Audited—Amount	Unpaid as of April 1, 1933
1928	Jan.	168,531.44	.....
	Feb.	199,879.47	.....
	Mar.	200,476.65	.....
	Apr.	185,957.16	.....
	May	180,730.08	.....
	June	160,167.19	.....
	July	149,776.97	87,494.15
	Aug.	157,271.21	.....
	Sept.	143,388.78	88,138.34
	Oct.	163,697.51	96,286.49
	Nov.	169,657.61	.....
	Dec.	170,723.21	.....
		2,050,347.28	271,893.98
1929	Jan.	179,514.77	109,340.14
	Feb.	171,297.28	.....
	Mar.	220,821.23	110,085.91
	Apr.	197,297.45	109,478.23
	May	206,845.02	.....
	June	172,888.42	95,523.37
	July	170,702.09	91,283.73
	Aug.	153,672.78	89,541.37
	Sept.	152,330.04	90,145.19
	Oct.	163,944.70	96,784.87
	Nov.	176,896.45	89,639.20
	Dec.	144,880.73	.....
		2,111,591.11	883,326.50

[fol. 195]

1930	Jan.	175,790.17	105,255.23
	Feb.	231,419.43	.....
	Mar.	189,885.90	104,350.11
	Apr.	190,833.24	107,879.54
	May	232,375.47	97,249.97
	June	158,221.99	89,751.00
	July	156,556.13	95,485.96
	Aug.	134,941.77	81,914.40
	Sept.	131,403.43	.....
	Oct.	150,974.74	89,078.29
	Nov.	174,114.65	.....
	Dec.	144,191.53	85,103.17
		2,050,708.54	855,967.72

1931	Jan.	152,617.89	78,905.13
	Feb.	137,114.46	77,467.35
	Mar.	160,008.55	84,099.03
	Apr.	178,152.41	91,073.87
	May	206,917.97	90,206.38
	June	136,510.08	76,283.44
	July	123,412.52	71,287.50
	Aug.	120,596.33	63,240.46
	Sept.	104,526.26	63,243.91
	Oct.	113,655.15	66,263.44
	Nov.	128,413.04	63,934.27
	Dec.	105,358.74	65,005.81
		1,667,288.90	896,211.08

[fol. 196]

1932	Jan.	116,665.97	63,124.03
	Feb.	109,205.24	59,137.61
	Mar.	109,525.42	60,224.57
	Apr.	108,249.48	61,243.74
	May	125,123.87	53,759.08
	June	84,178.58	.....
	July	76,573.46	.....
	Aug.	77,704.04	44,412.35
	Sept.	71,536.45	.....
	Oct.	84,221.45	44,487.74
	Nov.	110,713.70	46,700.00
	Dec.	126,158.46	70,848.96
		1,199,861.13	503,936.56
Total 1-1-32 to 12-31-32..		9,079,796.95	3,410,440.86

[fol. 198] **Comstock Exhibit 130.**

Dividends Declared by St. Louis, Brownsville & Mexico Beginning January 1, 1924.

Date of Declaration	Rate or Amount	As of
4/29/24 (6/10/24)	$ 654,911.40	(See Note 2)
2/12/26	20%	Immediately
3/30/26	222,719.32	Immediately
8/17/26	41,344.58	Immediately
12/29/26	180,617.20	8/31/26
12/29/26	239,306.79	11/30/26
6/22/27	6,531.89	2/28/27
12/17/27	432,580.87	5/31/27
12/17/27	537,640.77	8/31/27
1/25/28	192,650.38	11/30/27
10/30/28	131,650.78	5/31/28
10/30/28	278,811.35	8/31/28
1/19/29	329,497.46	11/30/28
6/15/29	277,746.17	2/28/29
10/24/29	297,613.99	5/31/29
10/24/29	235,113.21	8/31/29
6/19/30	131,075.01	11/30/29
6/19/30	239,663.62	2/28/30
12/ 6/30	178,568.70	5/31/30
12/ 6/30	281,590.66	8/31/30
6/17/31	316,188.85	11/30/30
6/17/31	238,890.88	2/28/31
7/11/31	3,500,000.00	6/30/31

Notes: (1) Where the same date is repeated, separate dividend resolutions were adopted on such dates.

(2) The resolution of 4/29/24 specified no rate or amount; the figure is stated in a resolution of 6/10/24 which refers to an auditor's certificate dated 5/12/24.

Sheet 178

New Orleans Texas & Mexico

Journal Entry 12/31/33 — #56

	Dr	Cr	Auditor's Number	Voucher Number	Amt
St L B & M. Ry Co - Advances Neptune	11664331.10				
B & L M Ry Co " "	3588548.60				
O M & R Co " "	201111.78				
N O & M R Co " "	1705752.21		May 1928	F 1746	① 102
			Aug 1928	F 1861	① 15
Journal Entry Bills					
		11677463.69	Nov 1928	F 1904	① 9
To transfer Journal Entry bills payable as of Nov 30, 1933 being balance of payable 7/1/32 forwarded 7/1/33 Journal Entry Debit to and 2060 advances to affiliated Companies as authorized by Auditors folio 21-0 and as detailed by Schedule attached to file copy of this entry			Dec 1928	F 1914	① 8
			Feb 1929	F 1919	① 6
				F 1923	① 2
				F 1929	① 11
			March 1929	F 1874	① 16
				F 1840	① 10
			April 1929	F 1947	① 108
			May 1929	F 1856	① 61
			June 1929	F 1961	① 96
			July 1929	F 1870	(14) 145
				F 1888	① 104
			Aug 1929	F 1969	(14) 143
				F 1975	① 92
			Sept 1929	F 1886	(14) 134
				F 1894	① 94
			Oct 1929	F 1987	(14) 109
				F 1993	① 95
			Nov 1929	F 2000	(14) 138
				F 2014	① 92
			Jan 1930	F 1914	(14) 170
				F 1924	① 110
			Feb 1930	F 2019	(14) 154
				F 2035	① 64
			March 1930	F 1934	(14) 144
				F 1954	① 85
				F 1958	① 104
			April 1930	F 2041	(14) 101
				F 2057	① 104
				F 2061	① 105
			May 1930	F 1960	(14) 97
				F 1984	① 79
				F 1988	① 110
			June 1930	F 2079	① 101
			July 1930	F 1924	① 92
				F 2067	(14) 170
			Aug 1930	F 2081	141

Comstock Exhibit 131.

	Audits Month	Voucher Number	Amount		Audits Month	Voucher Number	Amount
				Vouchers 44 & 84 inclusive were paid by Treasurer of Navy Yard prior to June 1928			
	May 1928	F 1740	10358757	Forwarded			4460938
	Aug 1928	F 1861	1602000		Sept 1930	F 2058	129469
1469	Nov 1928	F 1894	9650121			F 2034	9765781
	Dec 1928	F 1904	8444170		Oct 1930	F 2103	12129581
	Feb 1929	F 1919	6174057			F 2107	9722548
		F 1923	2026192		Nov 1930	F 2038	8171467
		F 1927	1123407			F 2056	8838201
	Mar 1929	F 1874	16487099			F 2060	11600000
		F 1840	10795941		Dec 1930	F 2115	16457853
	April 1929	F 1947	10809744			F 2137	9310061
	May 1929	F 1886	6174763		Jan 1931	F 2061	10698794
	June 1929	F 1961	9627493			F 2096	9954874
	July 1929	F 1870	14739416		Feb 1931	F 2141	10035609
		F 1888	10479894			F 2151	10014993
	Aug 1929	F 1969	14391670		Mar 1931	F 2078	10369586
		F 1975	9676086			F 2090	9840079
	Sept 1929	F 1886	13457829		April 1931	F 2153	16155861
		F 1894	9479494			F 2177	10339435
	Dec 1929	F 1987	10998683		May 1931	F 2092	10844735
		F 1993	9518778			F 2104	10066918
	Dec 1929	F 2000	19577127		June 1931	F 2181	9030400
		F 2012	9781860			F 2189	65507973
	Jan 1930	F 1919	17005394			F 2191	9407096
		F 1948	11015397		July 1931	F 2106	6644671
	Feb 1930	F 2019	15637902			F 2118	8638657
		F 2042	6480091		Aug 1931	F 2193	9060483
	Mar 1930	F 1939	16105246			F 2211	8068536
		F 1954	8531795		Oct 1931	F 2213	7604464
		F 1958	10476493			F 2225	8162566
	April 1930	F 2041	10170293		Nov 1931	F 2136	9459549
		F 2057	10485484			F 2148	8376649
		F 2061	10978854			F 2156	11600000
	May 1930	F 1960	9701357		Dec 1931	F 2231	13564376
		F 1986	7943166			F 2248	8943084
		F 1988	11082047		Jan 1932	F 2154	7157963
	June 1930	F 2079	10170544			F 2166	7898734
	July 1930	F 2020	9728823		Feb 1932	F 2247	8376420
		F 2069	17081725			F 2255	7403305
	Aug 1930	F 2081	14190697		Mar 1932	F 2174	7725847
		F 2097	9578976			F 2178	7914670
			46093811				88197741

Sheet 29

New Orleans Federal & Marine

Journal Entry 11/21/33 — #56

11/30/33

St L Bdge Vouchers Journ of Nov M-Chinds May 1933				Bridge Vouchers Journal of N.O.F.M. Chinds & May 1933				B & L & Yr. Vouchers Journal			
Audit Month	Voucher Number	Amount		Audit Month	Voucher Number	Amount		Audit Month	Voucher Number	Amount	
Forwarded		881807741		July 1928	F 1840	87 49 46	4-28				
April 1932	F VV87	145 00 94		Sept 1928	F 1878	88 13 834	5-28				
	F VV67	59 53 619		Oct 1928	F 1921	96 26 449	6-28	June 1933	F V504		
May 1932	F V180	1038 50 70		June 1929	F 1950	1098 40 14	7-28	Sept 1933	F V597		
	F V182	65 47 926		Nov 1929	F 1971	1102 85 91	8-28	April 1933	F V831		
June 1932	F VV77	6 V80 763		April 1929	F 2021	1094 93 73	9-28				
	F VV81	633 75 71		June 1929	F 2055	95 57 837	10-28				
July 1932	F V184	66 V59 32		July 1929	F 2047	91 28 V72	11-28	Orange & Northern Vouchers Journal			
Aug 1932	F 113541	7 V37 502		Aug 1929	F 2071	89 54 187	12-28				
	F 113843	58 82 448	1932 / 1857 V 64 98	Sept 1929	F 2084	90 14 519	1-29	Nov 1929	F 1438		
Sept 1932	F 113792	55 72 948		Oct 1929	F 2087	96 78 487	2-29				
Oct 1932	F 114671	176 46 727		Nov 1929	F 2077	89 63 920	3-29	Oct 1930	F 1538		
	F 114721	① 54 16 745		Jan 1930	F 2085	105 V55 78	4-29				
Nov 1932	F 114830	② 116 00 000		March 1930	F 2116	104 V50 11	5-29	Jan 1931	F 1578		
	F 114840	999 V05 87		April 1930	F 2163	10782 954	6-29	Feb 1931	F 1641		
	F 114856	① 58 876 73		May 1930	F 2106	97 249 97	7-29	May 1931	F 1766		
Dec 1932	F 114839	② 3 V2		June 1930	F 2177	89 75 160	8-29	June 1931	F 1829		
	F 115895	16 16 88		July 1930	F 2176	95 48 596	9-29	July 1931	F 1870		
	F 115847	63 46 892		Aug 1930	F 2189	81 91 440	10-29	Aug 1931	F 1924		
	F 115833	1193 58 96		Oct 1930	F 2169	89 07 826	11-29		F 1981		
Jan 1933	F 115976	① 7 V52 047		Nov 1930	F V117	85 103 17	12-29	Sept 1931	F 1978		
	F 115976	59 145 96				8559 67			F 1986		
Feb 1933	F 116881	58 891 20		Jan 1931	F VV36	78 90 V12	1-30	Oct 1931	F 1983		
	F 116887	58 183 14		Feb 1931	F V133	77 46 V25	2-30		F 1995		
March 1933	F 117178	5 V20 V27		March 1931	F VV170	84 09 903	3-30	Nov 1931	F 1994		
	F 117184	58 08 V40		April 1931	F VV13	91 07 387	4-30	Dec 1931	F 1997		

Comstock Exhibit 131.

Clearings

Nevada

31/33 — #56

17/30/00

Audit Months	Voucher Number	Amount		Audit Months	Voucher Number	Amount	Audit Months	Voucher Number	Amount
July 1929	F1840	87 49 46		Amount		350461380	Jan 1926	F1074	17 17 96
Aug 1929	F1873	88 13 834		Jan 1933	F25504	41674 79	July 1926	F1350	6 11 607
Oct 1929	F1921	96 46 44		Dec 1932	F26797	43904 73		F1179	24 17 486
Jan 1929	F1950	109840 14		April 1933	F26831	35558	Oct 1926	F1149	688577
Mar 1929	F1976	110 08 691					Nov 1926	F1174	98 12 16
April 1929	F2031	109 47 873				353548160	Dec 1926	F1169	16 24 168
June 1929	F2055	95 57 827							803 794
July 1929	F2047	91 28 772					Jan 1927	F1146	13 90 638
Aug 1929	F2071	89 54 187		Orange & Northern Lease N.O.T. Co.			Feb 1927	F1197	13 68 021
Sept 1929	F2084	90 14 519		Nov 1929	F1438	4793 74	April 1927	F1225	8263 45
								F1277	21986 99
Oct 1929	F2087	96 78 487					May 1927	F1202	1481607
Nov 1929	F2077	89 69 720		Dec 1930	F1528	848637	June 1927	F1245	13 15 754
Jan 1930	F2085	105 75 578						F1254	5 56 792
Mar 1930	F2116	104 50 111		Jan 1931	F1578	11 17363	July 1927	F1248	5 73 100
April 1930	F2163	107 87 954		Feb 1931	F1541	14 10 238	Aug 1927	F1277	10 99 356
								F1287	8068 28
May 1930	F2142	97 24 997		May 1931	F1576	3367 71	Sept 1927	F1262	691125
June 1930	F2177	89 75 160		June 1931	F1569	11 24 957		F1309	6 75 417
July 1930	F2176	95 48 596		July 1931	F1570	11 27 769	Oct 1927	F1299	7 30 370
Aug 1930	F2189	81 91 480		Aug 1931	F1575	86 1347			1130
Oct 1930	F2169	89 07 879			F1581	29 808	Nov 1927	F1270	11 418 11
Nov 1930	F2117	85 103 17		Sept 1931	F1578	7 55 773	Dec 1927	F1319	584 18
					F1586	3 11 179			15 74 90 00
Jan 1931	F2136	78 90 5 17		Oct 1931	F1583	630716	Jan 1928	F1292	6 31 505
Feb 1931	F2133	77 46 7 25			F1595	29 02 71	Feb 1928	F1343	8 75 740
Mar 1931	F2170	84 09 903		Nov 1931	F1594	24 00 857	March 1928	F1307	3 60 09 84
April 1931	F2153	91 07 3 87		Dec 1931	F1597	57 24 994		F1306	5 05 2 25
								F1314	1 23 5 26
							May 1928	F1324	8 53 2 28
								F1391	14 36 8 60
							June 1928	F1395	5 77 781
							July 1928	F1332	6 37 0 34
							Aug 1928	F1411	11 03 8 66
								F1430	11 42 4 38

	F 117784	2735	May 1931	F 2766	90 26 68				F 1605		
April 1933	F 117847	93134 16	June 1931	F 2773	76 98344	1931					
			July 1931	F 2780	71 28780	8463108			F 1596		
	Total	10664331 10	Aug 1931	F 2787	82 24046		Jan 1932		F 1604		
			Sept 1931	F 2794	63 24391		Feb 1932		F 1609		
			Oct 1931	F 2803	66 26394		March 1932		F 1614		
			Nov 1931	F 2804	63 93487		April 1932		F 1619		
			Dec 1931	F 2817	45 00581		May 1932		F 1625		
					846 31108		June 1932		F 1633		
							July 1932		F 1638		
			Jan 1932	F 2827	63 17403		August 1932		F 6593		
			Feb 1932	F 2837	59 13761	1932	Sept 1932		F 6645		
			March 1932	F 2846	60 77459	596 10457	Oct 1932		F 6650		
			April 1932	F 2857	61 24308		Nov 1932		F 6669		
			May 1932	F 2866	53 75903		Dec 1932		F 6714		
									F 6716		
			June 1932	F 2879	44 41485				F 6737		
			July 1932	F 2888	43 67058				F 6773		
			Aug 1932	F 2898	44 42734		January 1933		F 6762		
			Sept 1932	F 2908	46 10688		February 1933		F 6783		
			Oct 1932	F 2918	46 [illegible]		March 1933		F 6820		
			Nov 1932	F 2928	46 [illegible]				F 6846		
			Dec 1932	F 2938	46 10957			Total			

Comstock Exhibit 131.

Sheet 373

New Orleans Items & Notes

Journal Entry 1/21/32 - #56

N.O.P.V. Vouchers drawn NOT on			N.O.V.H. drawn on T.M.			
Accrued Month	Voucher No	Amount	Accrued Month	Voucher No	Amount	Bill Number ?
Transmitted from Sheet 4			Transmitted			
Jan 1930	F 1486	13901 74	Jan 1931	F 1641	1 1932 46	
Feb 1930	F 1545	1 7185 85		1642	130 75	
	F 1555	6 1309 55		1650	21 18	
Mar 1930	F 1504	1160581		1654	56031 L	
	F 1514	586946	Feb 1931	1675	99 1869	
April 1930	F 1559	1305778	Mar 1931	1656	1487711	
	F 1577	567710		1660	531 76	
May 1930	F 1516	1459195	April 1931	1689	557651	
July 1930	F 1541	81713		1681	1 1085 96	
Aug 1930	F 1585	1573929	May 1931	1666	1139989	Regen
Sept 1930	F 1560	1574965		1668	48391 3	Suspen
Oct 1930	F 1601	1814861	June 1931	1687	1070508	
Nov 1930	F 1607	2083965		1693	49 1838	
Dec 1930	F 1617	691913	July 1931	1674	1107187	Gen
		16868 V8		1676	470734	
				8679	470726	
			Aug 1931	8675	9158 27	(1) Suspension of Jo
Jan 1931	F 1581	15 1923 50	Sept 1931	8674	58 1617	
	F 1591	55 6140		8678	363 1 15	(2) Suspension Jun
Feb 1931	F 1619	11917 76		8686	45 1940	
Mar 1931	F 1594	1444613	Oct 1931	8763	54 1303	(3) Dredl Ord Ha
	F 1604	601687		8769	8081 75	(4) Rev Dem, Inc
April 1931	F 1615	1420815		8771	45 1167	(5) Maintenance Susp
May 1931	F 1606	1 1018 97	Nov 1931	8350	2079913	(6) Dredged - Ba

Sheet 373

Comstock Exhibit 13

...s & Indians

.../32 - #56

Merc

N. L. & W. Account No. T. M.

Credited Month	Voucher No.	Amount
Forwarded		
Jany 193	F 164	1732046
	1642	13075
	1650	2118
	1654	560316
Feb 193	1675	99787
Mar 193	1656	1487717
	1660	53176
April 193	1687	557651
	1681	1708596
May 193	1666	1139989
	1668	483973
June 193	1689	1070508
	1693	492838
July 193	1674	1107287
	1676	470736
	8679	471076
Aug 193	8673	915827
Sept 193	8774	587617
	8778	363715
	8786	45940
Oct 193	8763	543103
	8769	80817
	8771	45067

(Bill Number. ? ")

Regular embodied Bills
Supposedly Vouchers.

General Nature of Charges

(1) Proportion of Joint Expenses posted January Months

(2) Equipment Rent Note - Amounts Deposited with J.P. Morgan Co. 11/30/30 Charge

(3) Drill Rod Head during Months

(4) Per Diem, reclaims & mileage paid.

(5) Mountain Supplies

(6) Amended - 81 LB & M & NOT M

July 1931	F 1616	10388 58			8354	541377	⑦	Rental of Lighting
Aug 1931	F 1651	108 5866	Dec 1932		8473	18 1 0735		
Sept 1931	F 1626	167 93 20				703 83 490		
	F 1630	57 90 61						
Oct 1931	F 1659	178 1 18	Jan 1933		F 8418	1 2 8673		
	F 1667	5409 74			F 8715	1 2 5431 1		
Nov 1931	F 1637	2 2 5883 1	Feb 1933		F 8917	470938		
	F 1640	64 2 7 74	Mar 1933		F 8510	1079 285		
Dec 1931	F 1669	241 2 0 5 74			F 8517	44 5 5 78		
	F 1673	6 4 2 7 01	April 1933		F 8984	7501		
		3 5 0 6 1 0 9 8 2	May 1933		F 8558	47 2 409		
						12 2 5 2 0 4 7		

Comstock Exhibit 131.

[fol. 202] Comstock Exhibit 132.

Excerpts from Minutes of Meeting of Executive Committee of New Orleans, Texas & Mexico Railway Company held January 10, 1928.

New Orleans, Texas & Mexico Railway Company.

Minutes of meeting of Executive Committee held at No. 120 Broadway, New York, N. Y., at 11.15 o'clock A. M., January 10, 1928, pursuant to due notice.

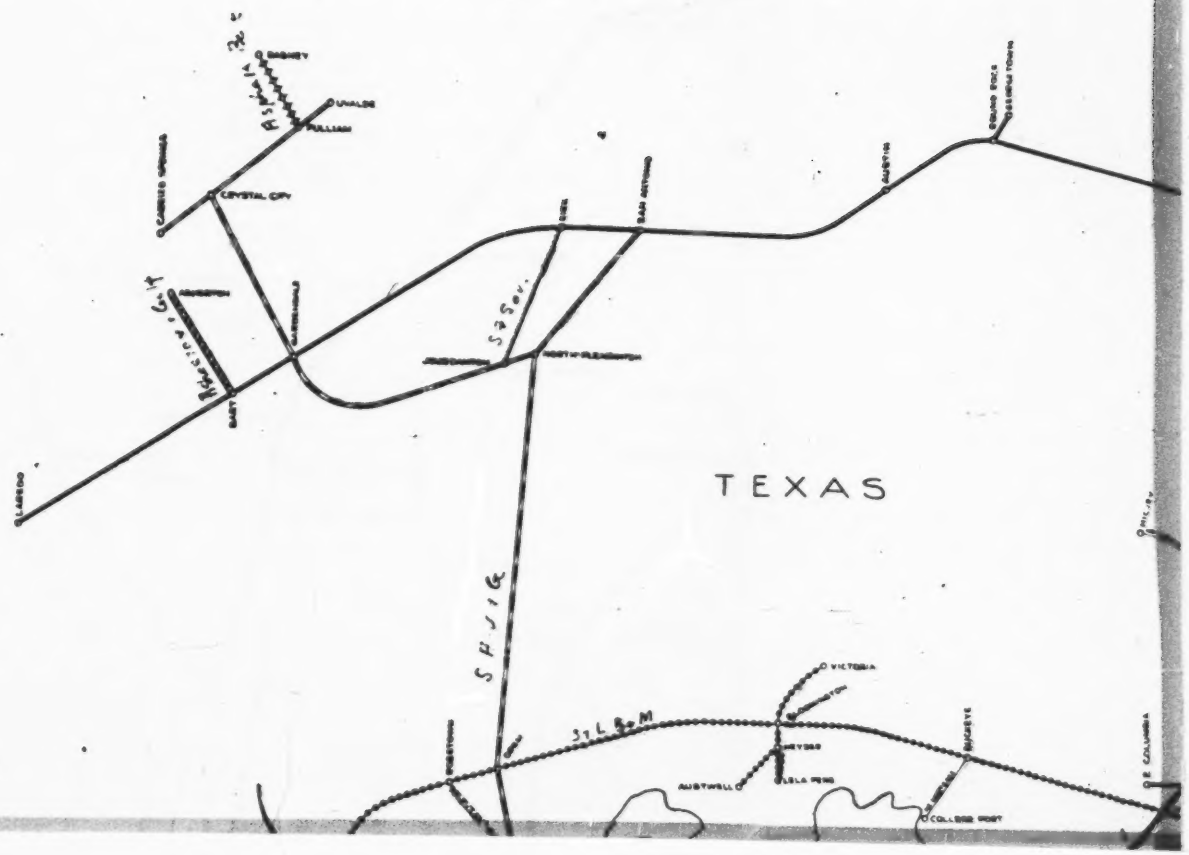
Present:

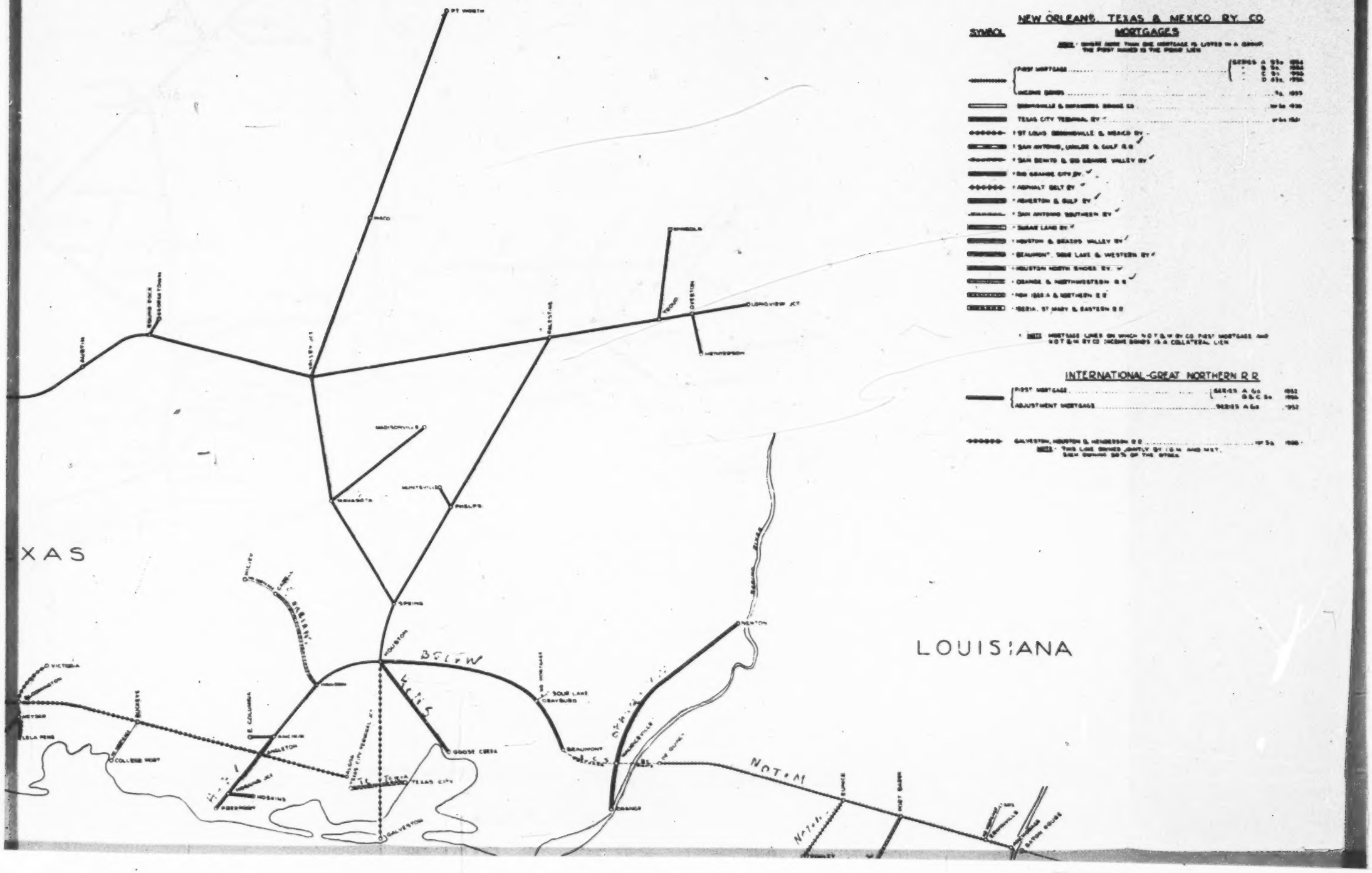
Messrs. William H. Williams (Chairman)
L. Warrington Baldwin
Matthew C. Brush
H. Hobart Porter
Charles H. Sabin
Finley J. Shepard

Carl A. de Gersdorff (General Counsel)
H. L. Utter (Secretary)

Advances by Missouri Pacific.

The Chairman stated that, pending contemplated sale of $5,900.00 First Mortgage, Series D, 4-½% Bonds, Missouri Pacific Railroad Company had made an additional advance of $100,000. to this Company on December 31, 1927, making a total of $3,130,000. advanced to date, authority having been granted by the Committee on December 13, 1927 to borrow up to $3,500,000.





NEW ORLEANS, TEXAS & MEXICO RY CO
MORTGAGES

SYMBOL

NOTE: WHERE MORE THAN ONE MORTGAGE IS LISTED IN A GROUP, THE FIRST NAMED IS THE PRIOR LIEN

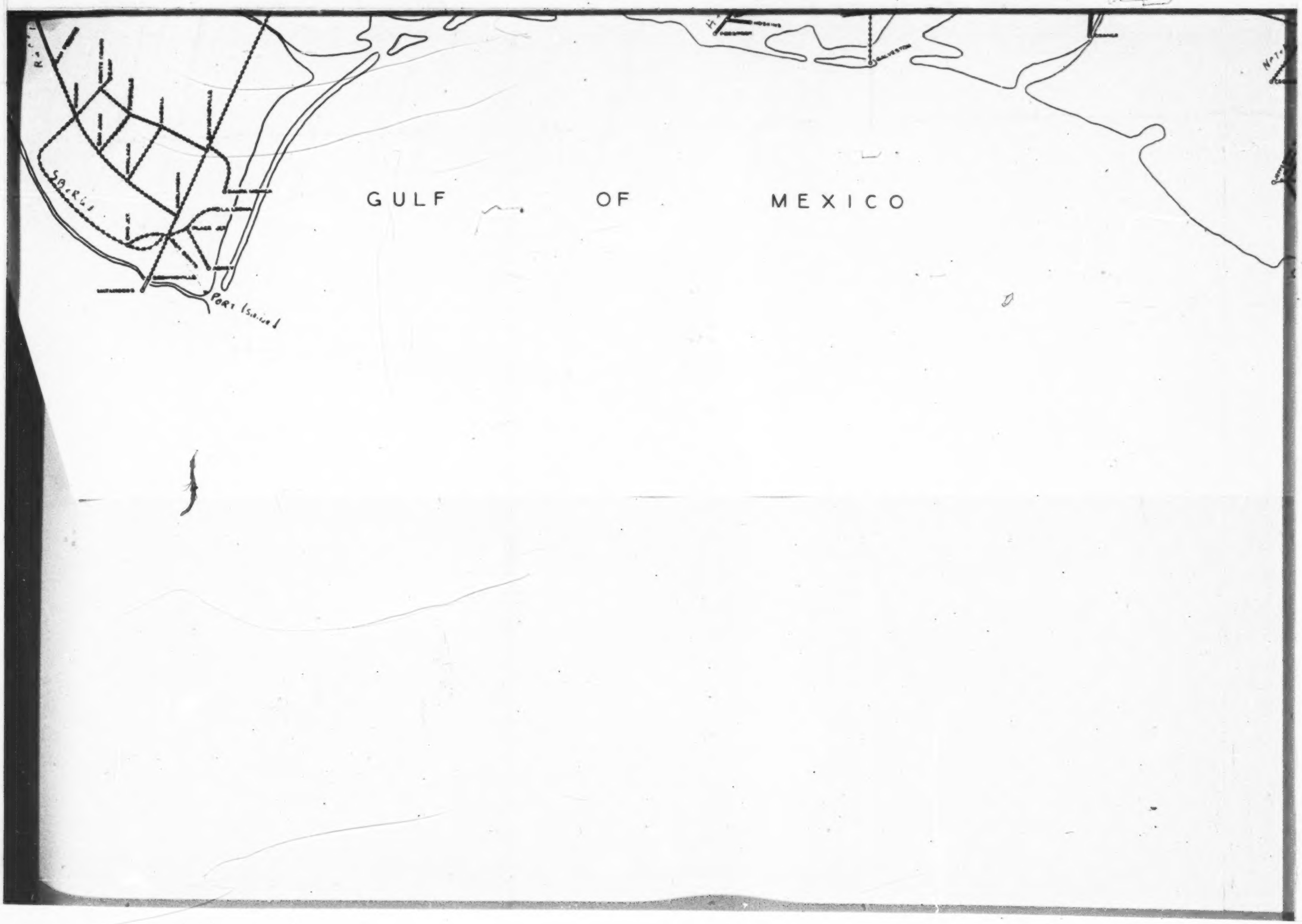
- FIRST MORTGAGE ..... SERIES A 5½s 1954; B 5½s 1954; C 5½s 1956; D 5½s 1956
- INCOME BONDS 5s 1935
- BROWNSVILLE & MATAMORAS BRIDGE CO 1st 6s 1930
- TEXAS CITY TERMINAL RY 1st 6s 1961
- * ST LOUIS BROWNSVILLE & MEXICO RY
- * SAN ANTONIO, UVALDE & GULF R R
- * SAN BENITO & RIO GRANDE VALLEY RY
- * RIO GRANDE CITY RY
- * ASPHALT BELT RY
- * HOUSTON & GULF RY
- * SAN ANTONIO SOUTHERN RY
- * SUGAR LAND RY
- * HOUSTON & BRAZOS VALLEY RY
- * BEAUMONT, SOUR LAKE & WESTERN RY
- * HOUSTON NORTH SHORE RY
- * ORANGE & NORTHWESTERN R R
- * NEW IBERIA & NORTHERN R R
- * IBERIA, ST MARY & EASTERN R R

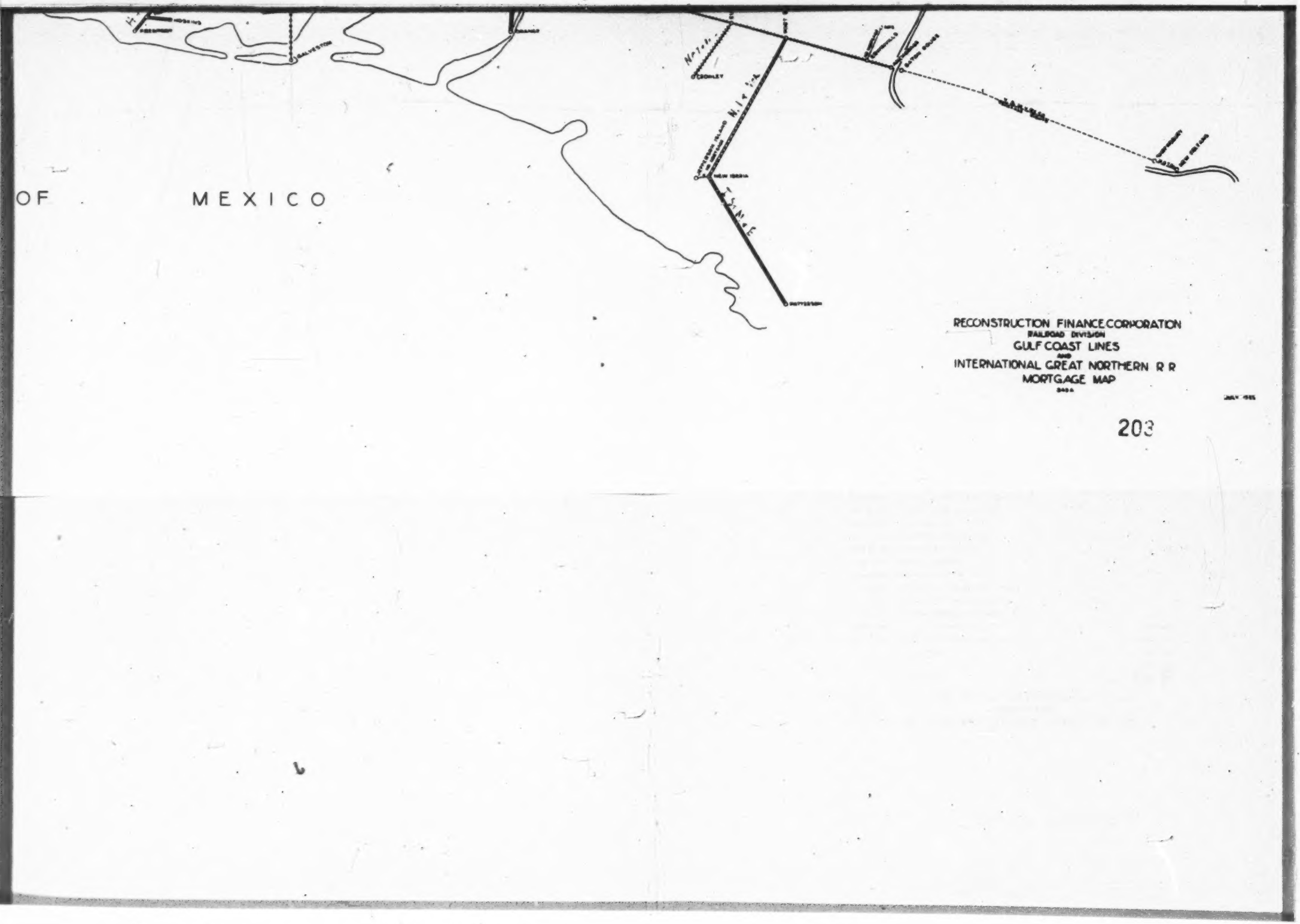
* NOTE: MORTGAGE LINES ON WHICH N O T & M RY CO FIRST MORTGAGE AND N O T & M RY CO INCOME BONDS IS A COLLATERAL LIEN

INTERNATIONAL-GREAT NORTHERN R R

- FIRST MORTGAGE ..... SERIES A 6s 1952; B & C 5s 1956
- ADJUSTMENT MORTGAGE ..... SERIES A 6s 1952
- GALVESTON, HOUSTON & HENDERSON R R 1st 5s 1956

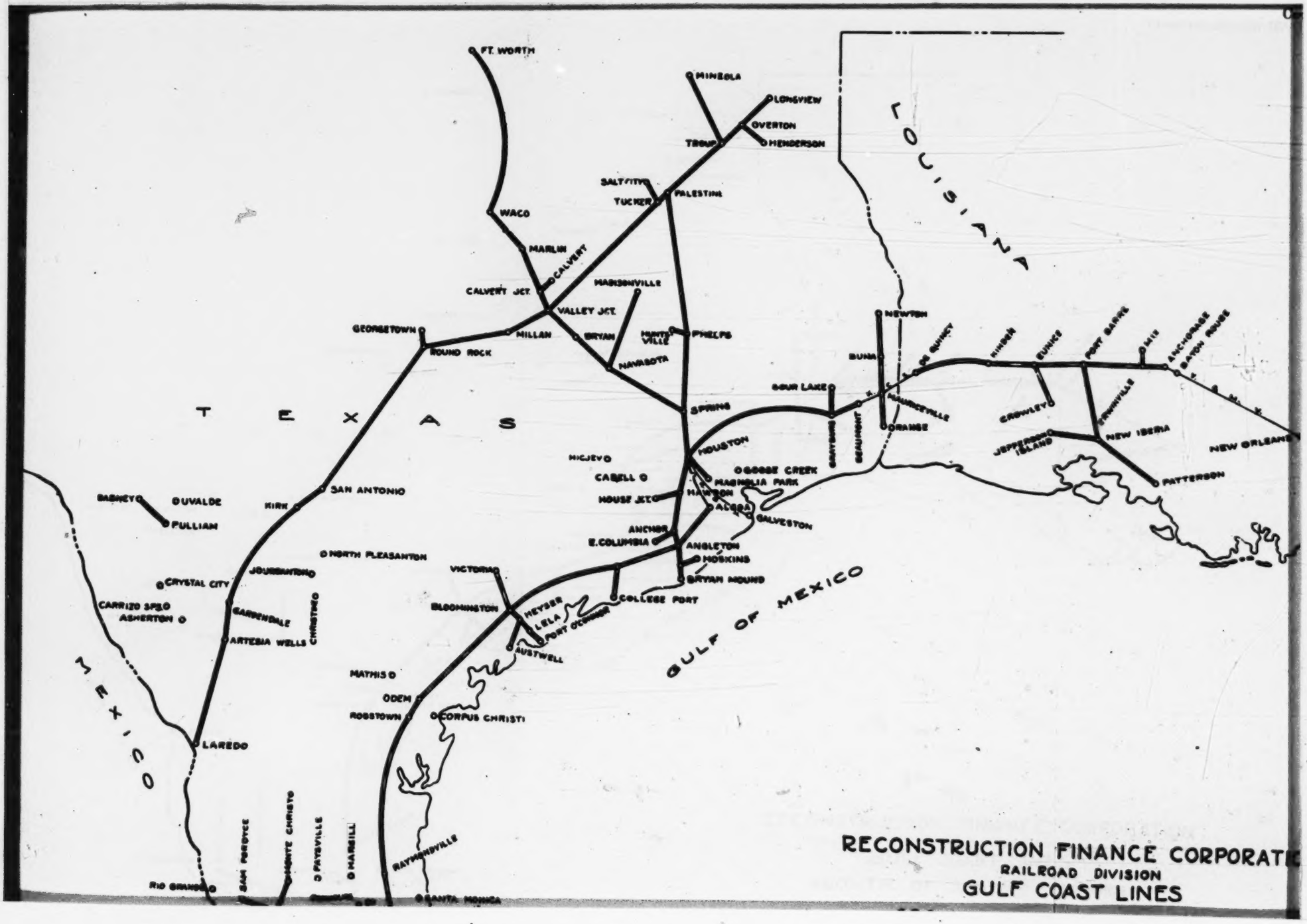
NOTE: THIS LINE OWNED JOINTLY BY I & G N AND M K T. EACH OWNING 50% OF THE STOCK


GULF OF MEXICO

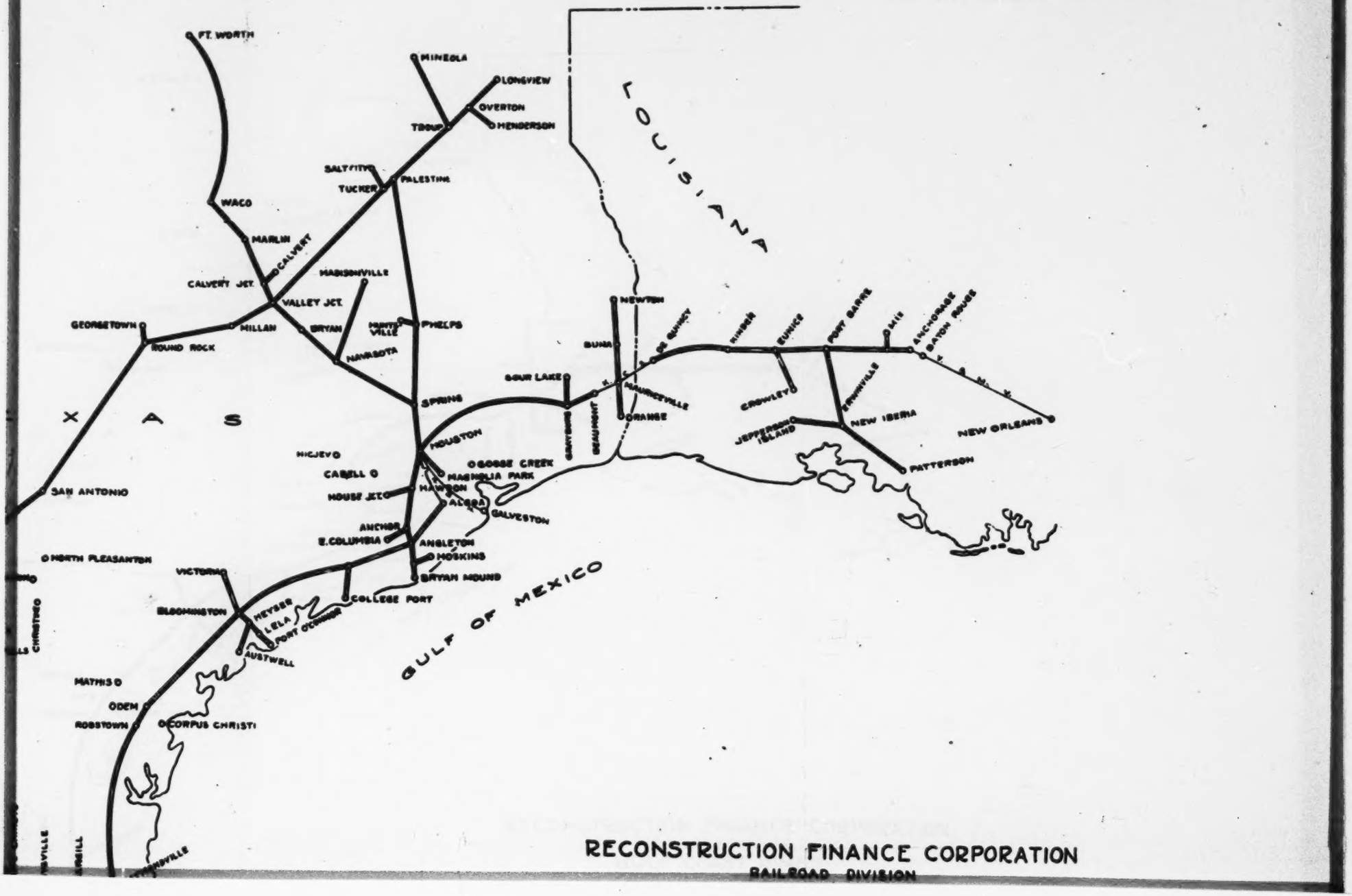


RECONSTRUCTION FINANCE CORPORATION
RAILROAD DIVISION
GULF COAST LINES
AND
INTERNATIONAL GREAT NORTHERN R R
MORTGAGE MAP

203

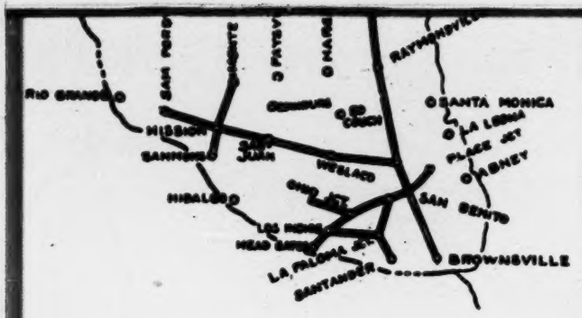

FT. WORTH
MINEOLA
LONGVIEW
OVERTON
HENDERSON
TROUP
SALT CITY
TUCKER
PALESTINE
WACO
MARLIN
CALVERT
CALVERT JCT.
MADISONVILLE
VALLEY JCT.
GEORGETOWN
MILLAN
BRYAN
PHELPS
ROUND ROCK
NAVASOTA
SPRING
LOUISIANA
NEWTON
BUNA
DE QUINCY
KINDER
EUNICE
PORT BARRE
ANCHORAGE
BATON ROUGE
NEW ORLEANS
SOUR LAKE
ORANGE
CROWLEY
JEFFERSON ISLAND
NEW IBERIA
PATTERSON
HOUSTON
NICJEVO
CARELL
GOOSE CREEK
MAGNOLIA PARK
HOUSE JCT.
HAWSON
ALGOA
GALVESTON
ANCHOR
E. COLUMBIA
ANGLETON
HOSKINS
BRYAN MOUND
COLLEGE PORT
VICTORIA
BLOOMINGTON
MEYSER
LELA
PORT O'CONNOR
AUSTWELL
TEXAS
MEXICO
GULF OF MEXICO
BARNEY
UVALDE
PULLIAM
KIRK
SAN ANTONIO
NORTH PLEASANTON
CRYSTAL CITY
JOURDANTON
CARRIZO SPRG
ASHERTON
CARRIZO
ARTESIA WELLS
CHRISTINE
MATHIS
ODEM
ROBSTOWN
CORPUS CHRISTI
LAREDO
SAN PEDRO
POINTE CHRISTE
PAYSVILLE
HARRELL
RAYMONDVILLE
RIO GRANDE
SANTA MONICA
RECONSTRUCTION FINANCE CORPORATION
RAILROAD DIVISION
GULF COAST LINES

Comstock Exhibit 133-B.



RECONSTRUCTION FINANCE CORPORATION

RAILROAD DIVISION



RAILROAD DIVISION

GULF COAST LINES

GROWTH OF SYSTEM 1915 to 1924

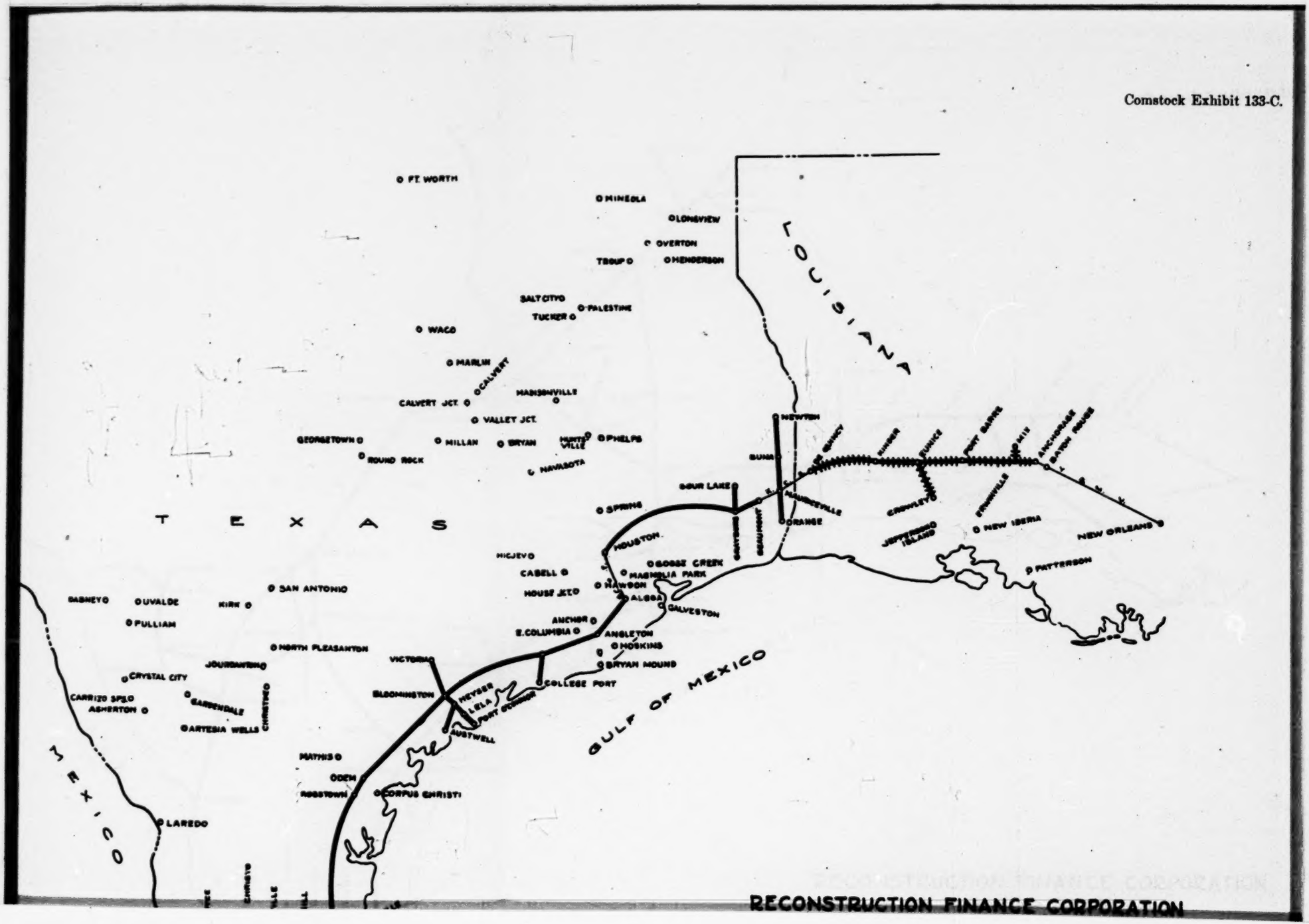
GULF COAST LINES AT BEGINNING OF DECADE

LINES CONSTRUCTED BY GULF COAST DURING DECADE

LINES ACQUIRED BY GULF COAST DURING DECADE

74 B

Comstock Exhibit 133-C.



RECONSTRUCTION FINANCE CORPORATION

GULF COAST LINES

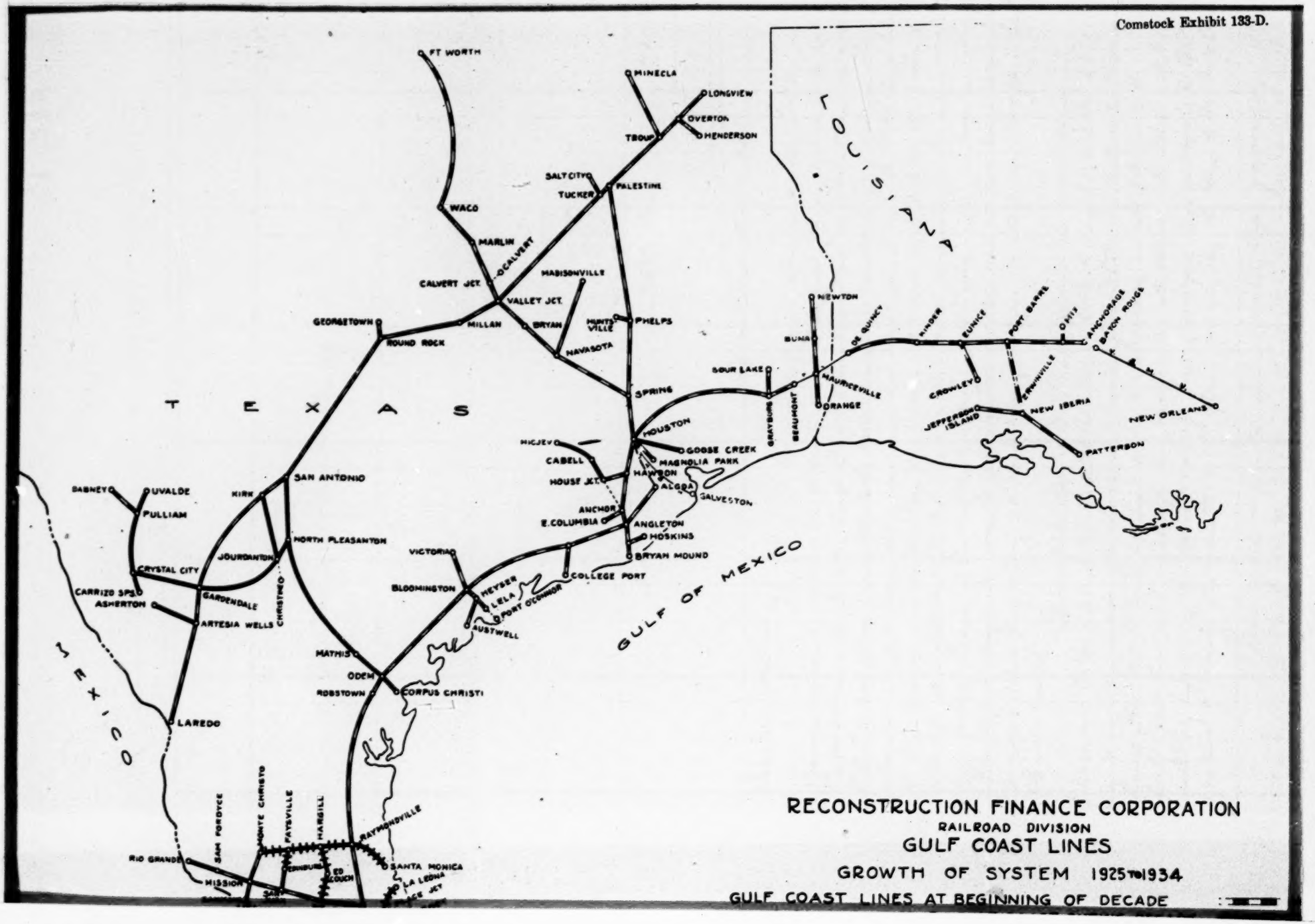
GROWTH OF SYSTEM 1905 TO 1914

LINES CONSTRUCTED BY GULF COAST DURING DECADE

LINES ACQUIRED BY GULF COAST DURING DECADE

74 A

Comstock Exhibit 133-D.



RECONSTRUCTION FINANCE CORPORATION

RAILROAD DIVISION

GULF COAST LINES

GROWTH OF SYSTEM 1925 TO 1934

GULF COAST LINES AT BEGINNING OF DECADE

GROWTH OF SYSTEM 1925 to 1934

GULF COAST LINES AT BEGINNING OF DECADE

LINES CONSTRUCTED BY GULF COAST DURING DECADE

LINES ACQUIRED BY GULF COAST DURING DECADE

LINES TAKEN UP 1925 TO 1934

74C

Ex 134A

Missouri Pacific Railroad

Summary from Jan 33 - Oct 24, 1937 Inclusive

Dear Mr. Bellows

The M.O.P. has a very large claim against the L&N Various attempts were made by the Railroad Commission to secure a settlement of this claim. On the other hand the L&N has claims against the M.O.P. and also the Texas Railroad Commission. The Attorney General and Railroad Commission met with the R.C.C. for a loan to L&N. It is felt that the settlement will be greatly expedited if Commission will any future loans of the motor transport companies here. The Chairman has requested me to bring the matter and as the Commission has suggested that the parties bring to the Commission for Executive

This call the claim of M.O.P. and show the amount (1,400,000.00) to the M.O.T. which will then pay it to the L&N and the L&N will use the amount to close out claim against M.O.P. The Commission hopes that the M.O.P. will be left with an amount to the Gulf Coast lines and a reasonable claim in its favor. L&N will be left with the amount in hand to M.O.P. after paying the M.O.P. entered into between the L&N and the M.O.P.

Can you inform me [illegible]

Comstock Exhibit

Missouri Pacific Railroad

Accounts from Jan 1 33 - Oct 31, 1937 Texas & N.O.

1711-44

T. & N. O. Books - Cr.

Dr. Missouri Pacific Railroad Company

[illegible]

[illegible]

[illegible]

Ex 134 B

Missouri Pacific Railroad

Transcript from J&L 33 - Oct 31, 1932 date of M.O.P.

12/14/44

Missouri Pacific Books-						
Dr. Advances to M.K.T. Ry Co					1761009.84	
Cr- Advances to L&N R R Co						1761009.84
Gulf Coast Lines Books						
Dr. Unmatured Interest Account						
(Interest on Unpaid Bills L&N)						
M.O.J.N. Ry Co				641295.84		
St L B & M Ry Co				25671		
B. & L. & N. Ry Co				2007.98		
O.N.M. R R Co				201.12	1498935.54	
Dr Audited Vouchers						
B. & L. & N. as from L&N.					59369	
			8/31/32			
Dr - Advances to -	advances	Unpaid Bills	Interest on U/P Accts			
S.O.U. & G.R.R Co	7105905.1	787603	44741	7940185		
N.L.&N.R.R Co		40000	1285	57885		
H.B.V Ry Co		76933	68730	145053		
Sugar Land Ry Co		314455	9686.71	4101126		
Galveston & Gulf Ry Co	2485778	112300	105439.4	4752477		
Rio Grande City Ry Co		5000	1108	6108		
S.A.S. Ry Co		35813	4175.61	2770374		
Asphalt Belt Ry Co		116971	2481.70	1417641		
S.B.&P. & L. Ry Co	1479648	17484	2560.33	1737445		
	8834137	1657988	64725.51	17610084		
L & N. Lines Books						
Dr. Advances from M.O.P.					17610098.4	
Cr - Advances to S.A.U.N.R.R Co						7105905.1
" " " Galveston & Gulf Ry Co						2485778
" " " S.B.&P. & L. Ry Co						1479648.4
Dr Various Current Bills						
B. & L. & N.				59369		
S.A.U.N.R.R.				787603		
N.L.N.				40000		
H.&B.V.				76933		
Sugar Land				3144555		
A.S.				112300		
R.G.				5000		
S.A.S.				35813		
Asphalt Belt				116971		
S.B.&P. & L.				17484		1663785.7

Comstock Exhibit

(K)

Missouri Pacific Railroad

Transcript from 6.33 - Oct 31, 1937 Date of M.O.P. 12/14/44

Missouri Pacific Books-						
Dr. Advances to N.O.T.M. Ry Co					1761009.84	
Cr- Advances to L&N R R Co						1761009.84
Gulf Coast Lines Books						
Dr. Unmatured Interest Account						
(Interest on Unpaid Bills L&N)						
N.O.T.M. Ry Co				641945.49		
M.L.B.&M. Ry Co				25656.71		
B.&L.V.N. Ry Co				700.78		
O.N.M. R R Co				201.12	1768595.35	
Dr Audited Vouchers						
B.&L.V.N. unfunded L&N					59369	
			8/31/37			
Dr - Advances to -		advances	Unpaid Bills	Interest on U/P Accts		
S.O.U.&G.R.R.Co		7105905.1	7876037	46741	7940185.41	
N.L.&N.R.R.Co			40000	1785	57855	
H.B.V. Ry Co			762933	68730	1450253	
Sugar Land Ry Co			3141455	98671	4110126	
Asherton & Gulf Ry Co		2485728	113300	1054399	4753427	
Rio Grande City Ry Co			5000	1108	6108	
S.A.S. Ry Co			353813	41756.1	2770374	
Asphalt Belt Ry Co			1169471	24870	1417641	
S.B.&R.B. & Ry Co		147964.58	17484	2560.33	1737425	
		8834137	16799188	642725.1	17610098.4	
L.&N. Line Books						
Dr. Advances from M.O.P.					1761009.84	
Cr - advances to S.O.U.&G.R.R.Co						7105905.1
" " " Asherton & Gulf Ry Co						2485728
" " " S.B.&R.B. & Ry Co						147964.58
Dr Various Carson Bills						
B.&L.V.N.				59369		
S.A.N.Co.				7876037		
N.L.N.				40000		
H.&B.V.				762933		
Sugar Land				3141455		
A.&S.				113300		
R.G.				5000		
S.A.S.				353813		
Asphalt Belt				1169471		
S.B.&R.B.V.				17484		
						16637857
						10497904.1

Comstock Exhibit 134-B.

Missouri Pacific Railroad

Abstract of M.O.J.M. Jc 33 - Oct 31 1932

11/1/44

				Dr	Cr
	Abstract of M.O.J.M.			1[illegible]04	
		Abstract of Jc 33			1[illegible]04

Abstract No. J. M. Jones - Oct 31, 1932

14/6/44

					Dr	Cr
	Abstract No. J. M.				1751.00	
	Abstract No.					1751.00

Comstock Exhibit 134-C.

2120

[fol. 210] Comstock Exhibit 135.

Excerpts from minutes of meeting of Board of Directors of Missouri Pacific Railroad Company held October 11, 1932.

Minutes of meeting of Board of Directors held at office of the Company, No. 3500 Terminal Tower, Cleveland, Ohio, at 2:00 o'clock P. M., October 11, 1932, pursuant to due notice.

Present:

Messrs. O. P. Van Sweringen (Chairman)
L. W. Baldwin
Leonard P. Ayres
Darwin S. Barrett, Jr.
Alva Bradley
Henry G. Dalton
Fred G. Hilvert
William T. Kemper
John G. Lonsdale
W. W. Reilley
John Sherwin, Jr.
Finley J. Shepard
George A. Tomlinson
W. P. Weber

Herbert Fitzpatrick (Vice President—Law and Corporate Relations)
Wm. Wyer (Secretary)

Ratification of Loan of $3,000,000. received from The Railroad Credit Corporation on August 30, 1932.

The Chairman stated that, pursuant to resolutions adopted on August 9, 1932, applications were made on August 10, 1932, to Reconstruction Finance Corporation and The Railroad Credit Corporation concurrently for a loan of $3,000,000. to be made available on or before September 1, 1932, to assist the Company in meeting its interest payments due on that date, and submitted both appli-

cations to the Board for inspection. He further stated that, after negotiations, the Railroad Credit Corporation made the loan of $3,000,000. upon condition, among other things, that it be released from its agreement to lend this Company the sum of $4,300,000. in two instalments of $1,500,000. and $2,800,000. respectively, resolutions approving these two instalments having been adopted by the Board of Directors of said Corporation upon February 17, 1932, and February 24, 1932, respectively. The sum of $4,300,000. required by this Company at that time was advanced by Reconstruction Finance Corporation, the resolutions of The Railroad Credit Corporation referred to above providing that, in the event the funds were advanced by Reconstruction Finance Corporation, it would when funds became available pay direct to Reconstruction Finance Corporation the amount of such advances made by it. This Company furthermore gave to Reconstruction Finance Corporation irrevocable orders upon The Railroad Credit Corporation directing the latter Corporation to pay such sums, when advanced, direct to Reconstruction [fol. 211] Finance Corporation, which orders were on August 30, 1932 surrendered by Reconstruction Finance Corporation to The Railroad Credit Corporation for account of Missouri Pacific Railroad Company, and delivered to Missouri Pacific Railroad Company by The Railroad Credit Corporation.

The Chairman further submitted to the Board for inspection, copies of various other documents, as more specifically referred to hereinafter, executed and delivered by Wm. Wyer, Treasurer, in connection with the said loan of $3,000,000.

Whereupon, on motion duly seconded, the following preambles and resolutions were unanimously adopted:

Whereas, applications dated August 10, 1932, for a loan of $3,000,000. to be made available on or before September 1, 1932, were prepared and submitted on behalf of this Company by its Treasurer, Wm. Wyer, to Reconstruction Finance Corporation and The Railroad Credit Corporation concurrently; and

Whereas, The Railroad Credit Corporation granted said loan pursuant to resolutions adopted at a meeting of its Board of Directors held on August 18, 1932, subject, however, among other things, to the condition that it be released from its agreement, previously made, to lend this Company the sum of $4,300,000. when funds became available, which condition was agreed to on behalf of this Company by its Treasurer, Wm. Wyer; and

Whereas, the Railroad Credit Corporation requested that certain securities be pledged with it as collateral for the loan of $3,000,000., and Wm. Wyer, Treasurer, acting under the authority of resolutions adopted August 9, 1932, did pledge with said Corporation the securities hereinafter mentioned; and

Whereas, certain documents were executed and delivered to The Railroad Credit Corporation on August 30, 1932, by Wm. Wyer, Treasurer, in connection with the loan of $3,000,000. received from said Corporation that day;

Now, therefore, be it

Resolved, that the action of the Treasurer, Wm. Wyer, in preparing and submitting applications concurrently to Reconstruction Finance Corporation and The Railroad Credit Corporation dated August 10, 1932, in form as submitted to this Board, for a loan of $3,000,000. to be made available on or before September 1, 1932, is hereby ratified, approved and confirmed.

Resolved, that the action of the Treasurer, Wm. Wyer, in releasing The Railroad Credit Corporation from its agreement, previously made, to lend this Company the sum of $4,300,000. when funds for that purpose became available, is hereby ratified, approved and confirmed.

Resolved, that the action of the Treasurer, Wm. Wyer, in pledging with The Railroad Credit Corporation the following securities and assets as collateral security for said loan; in assigning such of said securities as are registered in the name of this Company, or its predecessor; and in

guaranteeing the signatures of certain stockholders appearing on assignments of shares standing in the names of various individuals, is hereby ratified, approved and confirmed:

12] I. Issuing Company	Classification	Par Value
Denver and Rio Grande Western Railroad Company (150,000 shares represented by a voting trust certificate)	Common Stock	No Par
Texas & Memphis Ry. Bridge & Term. Company	Preferred Stock	$ 550,000.
Ter & Mt. Vernon R. R. Co.	Common Stock	100,000.
Ter & Mt. Vernon R. R. Co.	Preferred Stock	150,000.
Ter & Mt. Vernon R. R. Co.	1st Mortgage Bonds	250,000.
Denver and Rio Grande Western Railroad Company	Preferred Stock	608,800.
Tern Coal and Mining Company	Stock	1,000,000.
Ts, Oklahoma & Gulf Ry. Co.	Preferred Stock A	77,100.
Ts, Oklahoma & Gulf Ry. Co.	Preferred Stock B	600.
Ts, Oklahoma & Gulf Ry. Co.	Preferred Stock C	19,700.
Island, Arkansas & Louisiana Railroad Company	Notes	453,600.
Terminal Railway Company	Notes	575,000.

II. The Distributive Share of this Company in the fund established under the Marshalling and Distributing Plan, 1931, this being the same Distributive Share heretofore pledged by this Company with The Railroad Credit Corporation as partial security for a loan of $750,000. to International-Great Northern Railroad Company evidenced by a note for the same amount dated June 27, 1932.

III. The right, title and interest of this Company in and to any and all securities now or hereafter deposited as collateral security for any loan or loans from the Reconstruction Finance Corporation to this Company, subject always to the lien thereon of said Reconstruction Finance Corporation, including the following securities on deposit on August 30, 1932, with Reconstruction Finance Corporation as collateral security for loans to this Company:

Missouri Pacific Railroad Company's First and Refunding Mortgage Five Per Cent Gold Bonds, Series I	$22,250,000.
The Texas and Pacific Railway Company, Common Stock	11,475,000.
New Orleans, Texas & Mexico Railway Company's First Mortgage 4-½% Gold Bonds, Series D	1,900,000.
The Denver and Rio Grande Western Railroad Company's Refunding and Improvement Mortgage Six Per Cent Bonds, Series A	1,000,000.
Fort Worth Belt Railway Company, Capital Stock	160,000.

Resolved, that the action of the Treasurer, Wm. Wyer, in executing and delivering the following documents, in form as submitted to this Board, in connection with receiving the loan of $3,000,000. on August 30, 1932, is hereby ratified, approved and confirmed:

1. Note for $3,000,000. due on demand, but if no demand is made, then on or before August 29, 1934.

2. Pledge of this Company's Distributive Share in the Marshalling and Distributing Fund, 1931, (this being the same Distributive Share heretofore pledged by this Company with The Railroad Credit Corporation as partial security for a loan to International-Great Northern Railroad Company of $750,000. evidenced by a note in the same amount dated June 27, 1932.)

[fol. 213] 3. Pledge of all right, title and interest of this Company in and to any and all securities now or hereafter held by Reconstruction Finance Corporation as security for loans made by said Corporation to this Company, subject, however, to the prior lien of Reconstruction Finance Corporation.

4. Certificate addressed to Reconstruction Finance Corporation to the effect that a Pledge of Equity in all collateral pledged with said Corporation by this Company had been assigned to The Railroad Credit Corporation.

5. Certificate to the effect that this Company is not in default or in receivership, and is in every way eligible for a loan from The Railroad Credit Corporation.

6. Consent to Inaction, on the part of The Railroad Credit Corporation, its successors or assigns, with respect to the enforcement and/or collection of any or all obligations now or hereafter pledged by this Company with said Corporation.

7. Agreement to furnish The Railroad Credit Corporation with necessary Federal and State transfer tax stamps if securities now pledged with said Corporation are at any time actually transferred.

8. Receipt for irrevocable orders on The Railroad Credit Corporation in the amounts of $1,500,000. and $2,800,000., dated February 15th and February 25th, 1932, respectively, which orders were surrendered by Reconstruction Finance Corporation to the Railroad Credit Corporation for account of Missouri Pacific Railroad Company, and delivered to Missouri Pacific Railroad Company by The Railroad Credit Corporation.

Advance to New Orleans, Texas & Mexico Railway Company.

The Chairman stated that the International-Great Northern Railroad Company had at various times advanced funds to the New Orleans, Texas & Mexico Railway Company and its subsidiaries, and it was proposed that Missouri Pacific Railroad Company make an advance to the New Orleans, Texas & Mexico Railway Company sufficient to permit that Company and its subsidiaries to pay their debts to the International-Great Northern Railroad Company. The advance to the New Orleans, Texas & Mexico Railway Company is proposed to be made on the understanding that upon its receipt the International-Great Northern Railroad Company will apply it to the amount it owes the Missouri Pacific Railroad Company; the purpose being to simplify the accounts of the International-Great Northern Railroad Company, concentrating its intercompany borrowings in one account.

On motion duly seconded, it was unanimously

[fol. 214] Resolved, that the Missouri Pacific Railroad Company make an advance to the New Orleans, Texas & Mexico Railway Company sufficient to permit the New Orleans, Texas & Mexico Railway Company and subsidiaries to pay their debts to the International-Great Northern Railroad Company, with the understanding that the advance be so used by the New Orleans, Texas & Mexico Railway Company and its subsidiaries, and that upon receipt of said payments by the International-Great Northern Railroad Company that Company will apply them against the amount it owes to the Missouri Pacific Railroad Company.

Resolved, that the proper officers of this Company be, and they hereby are, authorized to take any and all action which they may deem necessary or proper fully to carry into effect the foregoing resolution.

Advance of $800,000. to New Orleans,
Texas & Mexico Railway Company.

On motion duly seconded, it was unanimously

Resolved, that the action of the Treasurer of this Company in advancing $800,000. to New Orleans, Texas & Mexico Railway Company on October 1, 1932, to bear interest at the rate of 6% per annum, payable January 1, April 1, July 1 and October 1 of each year, be and the same is hereby approved, ratified and confirmed.

Advance of $20,000. to International-
Great Northern Railroad Company.

On motion duly seconded, it was unanimously

Resolved, that the action of the Treasurer of this Company in advancing $20,000. to International-Great Northern Railroad Company on October 1, 1932, to bear interest at the rate of 6% per annum, payable January 1, April 1, July 1 and October 1 of each year, be and the same is hereby, approved, ratified and confirmed.

[fol. 215] **Comstock Exhibit 136.**

In the District Court of the United States
Eastern Division, Eastern Judicial District of Missouri
In the Matter of Missouri Pacific R. R. Co., Debtor
In Proceedings for the Reorganization of the Railroad, No. 6935

Gulf Coast Lines

1. Original Cost of Road and Equipment (Except Land) as of December 31, 1927, based on I. C. C. methods				$54,007,496
2. New Roads added at cost (Except Land)				
Asphalt Belt	December 31, 1928	$ 309,959		
Rio Grande City	January 1, 1928	350,201		
Houston North Shore	December 31, 1928	1,918,439		
		$2,578,599		2,578,599
3. Additions and Betterments as Reported to I. C. C. on BV Forms 588 (Except Land) period 1928-1932, Incl.				
	Added	Retired	Net	
	$10,767,688	$4,451,166	$6,316,522	6,316,522
4. Total Original Cost (Except Land) December 31, 1932				$62,902,617

[fol. 216]

Group Exhibit 1.

Sheet 1 of

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6935

Corrections In Certain Comstock Exhibits

The corrections indicated below should be made:

Exhibit No. 24—See statement of differences attached marked "A"

Exhibit No. 25—See statement of differences attached marked "B"

Exhibit No. 26—Income from Funded Securities shown as $4,268.00; should be $513.00
Income from Unfunded Securities shown as $513.00; should be $4,268.00

Exhibit No. 37—Total First Column $10,664,333.10; should be $10,664,331.10
Fifth item in column headed "N. I. N. R. R. Co." shows $168,685.28; should be $168,658.28
Eighth item same column shows $45,349.45; should be $45,276.45
Fifth item in column headed "Total" shows $4,060,132.12; should be $4,060,105.12
Sixth item same column shows $4,123,049.33; should be $4,120,049.33
Eighth item same column shows $598,980.76; should be $602,007.76

Exhibit No. 39—Third item in column Dec. 31, 1931 shows $6,500.00; should be $6,250.00

Exhibit No. 41—See statement of differences attached marked "C"

Exhibit No. 44—See statement of differences attached marked "D"

Exhibit No. 46—Fourth item in column headed "Rate of %" shows 8.268196; should be 8.268916

Exhibit No. 121—Sheet 3 of 3—Third item shows $6,230.95; should be $6,203.95

Office of Chief Acctg. & Fin. Officer,
St. Louis, Mo., February 3, 1945.

[fol. 217]

St. Louis, Brownsville and Mexico Railway Company

Differences Noted Comstock Exhibit No. 24 and Balance Sheet Reported in Annual Report to I. C. C.

	As shown on Comstock Exhibit 24		As shown in Balance Sheet in I. C. C. Report		Difference		
Assets							
1925							
	Investments in Aff. Companies:		Investments in Aff. Companies:				
	Advances	$ 96,194.79	Advances	$ 96,118.01	$	76.78)	Correction was made by let
	Other Investments	.....	Other Investments	76.78	D	76.78)	original Annual Report wa
1931							
	Misc. Physical Property	256,401.17	Misc. Physical Property	256,410.17	D	9.00	Transpositions of amount s
							hibit 24—Assets total $32,9
							944,506.54, difference $9.00.
1932							
	Cash	$1,200.00	Cash	$1,200.12	D	.12	Assets on Comstock Exhibit
							instead of $32,903,818.16, d

1924 to 1932, Incl.

Working Fund Advances are shown on Comstock Exhibit 24 as "Current Assets" and in I. C. C. Report as "Deferred Assets".

Liabilities						
1924						
Other Unadjusted Credits	$1,260,364.60	Other Unadjusted Credits	$1,291,148.25	D	30,783.65)	Correction was made by let
Operating Reserves	30,783.65	Operating Reserves	.....		30,783.65)	original Annual Report wa

1924 to 1932, Incl.

Appropriated Surplus on Comstock Exhibit 24 does not show that it was appropriated for "Additions to Property".

D—Denotes Decrease as shown on Comstock Exhibit 24 compared with that shown in I. C. C. Report.

Annual Report to I. C. C.

) Correction was made by letter dated 10-15-26 after
) original Annual Report was filed.

Transpositions of amount shown in Comstock Exhibit 24—Assets total $32,944,497.54 instead of $32,944,506.54, difference $9.00.
Assets on Comstock Exhibit 24 total $32,903,318.04 instead of $32,903,318.16, difference $.12.

port as [redacted]d Assets".

) Correction was made by letter dated 7-30-25 after
) original Annual Report was filed.

ns to Property".

[fol. 218]

New Orleans, Texas and Mexico Railway Company

Differences Noted Between Comstock Exhibit No. 25 and Balance Sheet Reported in Annual Report to I. C. C.

	As shown on Comstock Exhibit 25		As shown in Balance Sheet in I. C. C. Report		Difference	
Assets						
1932						
	Other Current Assets.....	$ 3,992.00	Other Current Assets.....	$ 36.20	$ 3,955.80)	Working Fund Advances shown
	Deferred Assets—Other	54,163.00	Total Deferred Assets	58,113.29	D 3,950.29)	25 as "Other Current Assets"
						Assets".
Liabilities						
1932						
	Other Current Liabilities.....	1,208.00	Other Current Liabilities.....	208.00	1,000.00)	"Funded Debt Matured Unpaid"
	Funded Debt Matured Unpaid..	.....	Funded Debt Matured Unpaid.	1,000.00	D 1,000.00)	Exhibit 25 as "Other Current L

1924 to 1932, Incl.

Appropriated Surplus on Comstock Exhibit 25 does not show that it was appropriated for "Additions to Property".

D—Denotes Decrease as shown on Comstock Exhibit 25 compared with that shown in I. C. C. Report.

New Orleans, Texas and Mexico Railway Company

Noted Between Comstock Exhibit No. 25 and Balance Sheet Reported in Annual Report to I. C. C.

Exhibit 25		As shown in Balance Sheet in I. C. C. Report		Difference	
	$ 3,992.00	Other Current Assets.....	$ 36.20	$ 3,955.80)	Working Fund Advances shown on Comstock Exhibit 25 as "Other Current Assets" instead of "Deferred Assets".
	54,163.00	Total Deferred Assets	58,113.29	D 3,950.29)	
	1,208.00	Other Current Liabilities.....	208.00	1,000.00)	"Funded Debt Matured Unpaid" shown on Comstock Exhibit 25 as "Other Current Liabilities".
	.....	Funded Debt Matured Unpaid.	1,000.00	D 1,000.00)	

stock Exhibit 25 does not show that it was appropriated for "Additions to Property".

Comstock Exhibit 25 compared with that shown in I. C. C. Report.

[fol. 219]

Sheet 4 of
Statement

New Orleans, Texas and Mexico Railway Company

Differences noted between Source of Income or Deficit—Years 1925 to 1932 Inclu
Comstock Exhibit No. 41 and Amounts reported in Annual Reports to I. C. C.

Columns Headed as Shown	Years 1926	1927	1928	1932	Total Years to 1932
Net Railway Operating Income					
As shown on Exhibit	$1,038,908	$	$921,700	$	$ 6,5
As shown in Annual Report filed with I. C. C.	1,038,870		921,710		6,5
Other Income (Column Other)					
As shown on Exhibit	47,623	33,103			3
As shown in Annual Report filed with I. C. C.	47,648	33,570			3
Total Other Income					
As shown on Exhibit	2,052,534	2,572,133			19,2
As shown in Annual Report filed with I. C. C.	2,052,559	2,572,600			19,2
Miscellaneous Deductions					
As shown on Exhibit		10,347			1
As shown in Annual Report filed with I. C. C.		9,880			1
Interest on Unfunded Debt					
As shown on Exhibit	726	28,732	29,433	198	1
As shown in Annual Report filed with I. C. C.	713	29,666	29,443	200	1
Interest on Funded Debt					
As shown on Exhibit				2,684,666	17,1
As shown in Annual Report filed with I. C. C.				2,684,660	17,1
Net Income before Interest on Funded Debt					
As shown on Exhibit				1,728,477	25,8
As shown in Annual Report filed with I. C. C.				1,728,471	25,8

[fol. 220]

Sheet 5 of 5
Statement "I

Corrections in Comstock Exhibit 44

At December 31	As Shown by Exhibit Fourth and Fifth Columns Headed Beaumont Sour Lake and Western Amount	Increase or Decrease	As Shown in B. S. L. & W. Annual Report to I. C. C. Page 235	
1924	$1,223,637	$	$1,139,128	$
1925	1,195,536	D 28,091	1,056,967	D 8
1926	1,438,004	242,468	1,346,981	2
1927	2,585,845	1,147,841	2,496,049	1,1
1928	2,332,258	D 253,587	2,242,381	D 2
1929	2,664,043	331,785	2,586,429	3
1930	3,025,590	361,547	2,948,019	3
1931	3,287,280	261,690	3,227,424	2
1932	3,680,622	393,342	3,642,174	4

D—Denotes Decrease.

The heading of this exhibit implies that the amounts due from the St. Louis, Brow
ville and Mexico Ry. Co. and the Beaumont, Sour Lake and Western Ry. Co. were
only to the New Orleans, Texas and Mexico Ry. Co. This is incorrect, as the amo
are due to the New Orleans, Texas and Mexico Ry. Co. and other New Orleans, Te
and Mexico Ry. Co. subsidiaries except the International-Great Northern.

Group Exhibit

Witness 1 for

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6935

Advances by Missouri Pacific Railroad Company to
New Orleans, Texas and Mexico Railway Company

Date	Check Number	Deposit to Credit Letter dated	Amount	Signed by	Endorsed By
November 30, 1928	8017		$ 300,000	H. L. Utter	H. L. Utter
December 30, 1928	8194		100,000	"	"
January 31, 1929	8316		150,000	"	"
February 28, 1929	8375		250,000	"	"
March 30, 1929	8547		500,000	O. B. Huntsman	O. B. Huntsman
Total of Advances to 3-30-29			$ 1,300,000		
Repayments (see table below)			1,148,912	(Excludes $79,000 Repaid Jan. 3, 1933)	
Unpaid balance on advance made 3-30-29			$ 151,088		
July 31, 1929	9106		$ 125,000	O. B. Huntsman	O. B. Huntsman
August 31, 1929	9236		275,000	"	"
September 30,1929	9338		850,000	"	"
October 31, 1929	9423		150,000	"	"
November 29, 1929	9536		310,000	"	"
January 30, 1930	9870		100,000	"	"
February 28, 1930	10085		260,000	"	"
March 31, 1930	10243		430,000	"	"
May 31, 1930	10558		275,000	"	"
September 29,1930	10890		550,000	E. G. Wagner	Wm. Wyer (stamp)
November 29, 1930		Nov. 26, 1930	300,000	Wm. Wyer	
December 31, 1930		Dec. 24, 1930	50,000	"	
January 31, 1931		Jan. 28, 1931	247,750	"	
February 25, 1931			75,000	Union Trust Co., Cleveland, Ohio transferred by wire to Irving Trust Co. for Credit of M.O.T.&	
March 31, 1931		Mar. 25, 1931	925,000	Wm. Wyer	
May 27, 1931	776		200,000	Edwin G. Wagner	(Union Trust Co. Cleveland, Oh transferred by wire)
August 29, 1931	891		250,000	C. W. Veitch	do
September 30,1931		Sept.25, 1931	850,000	Wm. Wyer	
October 31,1931		Oct. 24, 1931	125,000	"	
November 27, 1931	992		300,000	Edwin G. Wagner	(Union Trust Co. Cleveland, Oh
December 29, 1931	10982		75,000	"	Wm. Wyer (Stamp)
January 28, 1932	10985		200,000	"	" "
April 1, 1932		Mar. 28, 1932	925,000	"	
April 20, 1932	185949		100,000	W. J. Wright	A. T. Cole (Stamp)
August 5, 1932	11005		60,000	(Check cannot be located)	
October 1, 1932		Sept. 26, 1932	800,000	Wm. Wyer	
October 31, 1932			1,261,010	Journal Entry #33 Oct. 193	
November 28, 1932	11018		35,000	(Check cannot be located)	
December 30, 1932	11019			($79,000 Advanced Dec. 30, 1932 and Repaid Jan.	
February 1, 1933		Feb. 1, 1933	210,000	Wm. Wyer	
			$10,464,848		
Advance for Miscellaneous Physical Property					
March 25, 1929	Draft		$ 109,179	A. T. Cole	
March 23, 1931	Less Repayment		8,800		
	Unpaid Balance		$10,565,227		

Payments Credited to Principal and Interest of Advances:

Date	Total	Principal	Interest		
					(Nov. 30, 1928 $
June 4, 1930	$ 500,000	$ 500,000	$	Repayment of advances made	(Dec. 30, 1928
					(Jan. 31, 1929 Part
April 30, 1931	250,000		250,000		
August 27, 1931	200,000	7,612	192,388	" " " "	Jan. 31, 1929 Part
October 19, 1931	75,000	23,594	51,406	" " " "	Jan. 31, 1929 "
					(Jan. 31, 1929 Balance
December 28, 1931	100,000	40,002	59,998	" " "	(Feb. 28, 1929 Part
					(Feb. 28, 1929 Balance

	Years				To Years to 19
aded as Shown	1926	1927	1928	1923	
perating Income n Exhibit.....	$1,038,908	$	$921,700	$	$ 1,1
Annual Report filed					

In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6935

Advances by Missouri Pacific Railroad Company to New Orleans, Texas and Mexico Railway Company

Date	Check Number	Deposit to Credit Letter dated	Amount	Signed by	Endorsed By
November 30, 1928	8017		$ 300,000	H. L. Utter	H. L. Utter
December 30, 1928	8194		100,000	"	"
January 31, 1929	8316		150,000	"	"
February 28, 1929	8375		250,000	"	"
March 30, 1929	8547		500,000	O. B. Hunteman	O. B. Hunteman
Total of Advances to 3-30-29			$ 1,300,000		
Repayments (see table below)			1,148,912	(Excludes $79,000 Repaid Jan. 3, 1933)	
Unpaid balance on advance made 3-30-29			$ 151,088		
July 31, 1929	9106		$ 125,000	O. B. Hunteman	O. B. Hunteman
August 31, 1929	9236		275,000	"	"
September 30, 1929	9338		850,000	"	"
October 31, 1929	9423		150,000	"	"
November 29, 1929	9536		310,000	"	"
January 30, 1930	9870		100,000	"	"
February 28, 1930	10085		260,000	"	"
March 31, 1930	10243		430,000	"	"
May 31, 1930	10558		275,000	"	"
September 29, 1930	10890		550,000	E. G. Wagner	Wm. Wyer (stamp)
November 29, 1930		Nov. 26, 1930	300,000	Wm. Wyer	
December 31, 1930		Dec. 24, 1930	50,000	"	
January 31, 1931		Jan. 28, 1931	247,750	"	
February 25, 1931			75,000	Union Trust Co., Cleveland, Ohio transferred by wire to Irving Trust Co. for Credit of M.O.T.&M. Ry.	
March 31, 1931		Mar. 25, 1931	925,000	Wm. Wyer	
May 27, 1931	776		200,000	Edwin G. Wagner	(Union Trust Co. Cleveland, Ohio transferred by wire)
August 29, 1931	891		250,000	C. W. Veitch	do
September 30, 1931		Sept. 25, 1931	850,000	Wm. Wyer	
October 31, 1931		Oct. 24, 1931	125,000	"	
November 27, 1931	992		300,000	Edwin G. Wagner	(Union Trust Co. Cleveland, Ohio)
December 29, 1931	10982		75,000	"	Wm. Wyer (Stamp)
January 28, 1932	10985		200,000	"	" "
April 1, 1932		Mar. 28, 1932	925,000	"	
April 20, 1932	185949		100,000	W. J. Wright	A. T. Cole (Stamp)
August 5, 1932	11005		60,000	(Check cannot be located)	
October 1, 1932		Sept. 26, 1932	800,000	Wm. Wyer	
October 31, 1932			1,261,010	Journal Entry #33 Oct. 193-	
November 28, 1932	11018		35,000	(Check cannot be located)	
December 30, 1932	11019			($79,000 Advanced Dec. 30, 1932 and Repaid Jan. 3, 1933	
February 1, 1933		Feb. 1, 1933	210,000	Wm. Wyer	
			$10,464,848		
Advance for Miscellaneous Physical Property					
March 25, 1929	Draft		$ 109,179	A. T. Cole	
March 23, 1931	Less Repayment		8,800		
	Unpaid Balance		$100,379		

Payments Credited to Principal and Interest of Advances:

Date	Total	Principal	Interest		
June 4, 1930	$ 500,000	$ 500,000	$	Repayment of advances made	(Nov. 30, 1928 $300,000 (Dec. 30, 1928 100,000 (Jan. 31, 1929 Part 100,000
April 30, 1931	250,000		250,000		
August 27, 1931	200,000	7,612	192,388	" " " "	Jan. 31, 1929 Part 7,612
October 19, 1931	75,000	23,594	51,406	" " " "	Jan. 31, 1929 " 23,594 (Jan. 31, 1929 Balance 18,794
December 28, 1931	100,000	40,002	59,998	" " " "	(Feb. 28, 1929 Part 21,208 (Feb. 28, 1929 Balance 238,792
February 27, 1932	525,000	460,875	64,125	" " " "	(Mar. 30, 1929 Part 232,083
July 1932	100,000		100,000		
August 1, 1932	60,000	60,000		" " " "	Mar. 30, 1929 Part 60,000
August 26, 1932	225,000	56,829	168,171	" " " "	Mar. 30, 1929 Part 56,829
January 3, 1933	79,000	79,000		" " " "	Dec. 30, 1932 79,000
March 29, 1933	175,000		175,000		
Total Payments	$2,289,000	$1,227,912	$1,061,088		

Source: Company Records

[fol. 222] Group Exhibit 3.

Memorandum in connection with advances made by the Missouri Pacific Railroad Company to the New Orleans, Texas and Mexico Railway Company, and the cancellation of advances made by the International-Great Northern Railroad to the New Orleans, Texas and Mexico Railway Company.

The indebtedness of the various Gulf Coast Lines to the International-Great Northern Railroad represented by bills, interest on unfunded debt, and miscellaneous advances increased from time to time by reason of the inability of the Gulf Coast Lines to pay the amount in cash, until in October 1932 the amount involved was $1,261,009.84.

At the same time the International-Great Northern Railroad was indebted to the Missouri Pacific for advances made in an amount in excess of the indebtedness of the Gulf Coast Lines.

It was impossible for the Gulf Coast Lines to pay the International-Great Northern in cash, and in order to simplify the accounting, and to satisfy the criticism of the Railroad Credit Corporation, arrangements were made for the Missouri Pacific Railroad to advance the New Orleans, Texas and Mexico Railway Company, the amount of $1,261,009.84, and to credit the International-Great Northern Railroad with a like amount, representing advances to that company. At the same time, the Gulf Coast Lines made Journal Entries upon their books, cancelling the debt of their various companies to the International-Great Northern, and taking up the additional advance from the Missouri Pacific of a similar amount of money.

While the International-Great Northern Railroad adjusted its accounts between the Missouri Pacific and the several Gulf Coast Lines, which in reality transferred the debt of $1,261,009.84 due from the Gulf Coast Lines to the International-Great Northern Railroad Company, from the latter company to the Missouri Pacific Railroad Com-

pany, this adjustment was by Journal Entry, no cash changing hands.

There is attached hereto copy of a resolution adopted by the Board of Directors of Missouri Pacific Railroad Company, under date of October 11, 1932, authorizing this transaction, and copy of letter from Mr. Wyer, dated October 22, 1932, advising that the Railroad Credit Corporation had consented to the adjustment of the intercompany accounts on the books of the three companies.
St. Louis—July 5, 1935.

[fol. 223] Group Exhibit 4.

Whereas, the purchase-money for the within described lands and premises was provided and paid by the New Orleans, Texas and Mexico Railway Company, and it is the actual purchaser, and the conveyances were made to the undersigned Missouri Improvement Company, a corporation, as a trustee for the purchaser:

Now, Know All Men By These Presents:

That Missouri Improvement Company does hereby declare that it stands seized of said lands and premises within described in trust for the said New Orleans, Texas & Mexico Railway Company, its successors and assigns, and hereby agrees to convey, in whole or in part, at the request of New Orleans, Texas & Mexico Railway Company, and at its cost, to it or to such person or persons at such time or times and in such manner as it, the said New Orleans, Texas & Mexico Railway Company shall direct or appoint, viz: those certain lands and premises conveyed to Missouri Improvement Company as grantee thereof by the several conveyances of the grantors thereof, as follows:

Those certain lands and premises described in deed by Robert J. Kleberg and wife, Grantors, dated March 23, 1929, recorded April 10, 1929, in Book 183, page 394, in the recorder's office, Nueces County, Texas, except part sold to (a) Cage Hardware & Furniture Company by deed

dated February 15, 1930, (b) Norvell Wilder Supply Company by deed dated February 12, 1931, and (c) San Antonio, Uvalde & Gulf Railroad Company by deed dated November 18, 1931, and except for part referred to in a grant of easement to San Antonio, Uvalde & Gulf Railroad Company by instrument dated November 18, 1931.

In Witness Whereof, Missouri Improvement Company has caused its corporate name hereunto to be subscribed and its corporate seal hereto to be affixed and duly attested by its respective officers duly authorized so to do this the 3rd day of February, 1932.

MISSOURI IMPROVEMENT COMPANY,
By W. G. VOLLMER
President.

Attest:
By F. W. IRLAND
Secretary.

State of Missouri }
City of St. Louis } ss.

Before me the undersigned Notary Public in and for the City and State aforesaid, personally came Missouri Improvement Company, by its President, known to me to be the person whose name is subscribed to the foregoing instrument as President, and who acknowledged the same to be the act of said corporation, and that he executed the same for the purposes and consideration therein expressed.

Witness my hand and official seal, in the City of St. Louis, Missouri, the 3rd day of February 1932.

GEO. W. COLLINS
Notary Public

My commission expires June 27, 1933.

[fol. 224] Group Exhibit 5.

Saint Louis—June 11, 1930.

Mr. M. Eckert:

For your information, wish to advise that the remittance of $500,000.00 received from you June 5, has been applied in payment of advances heretofore made as follows:

November 30, 1928	$300,000.00
December 31, 1928	100,000.00
January 31, 1929, on account	100,000.00
Total	$500,000.00

F. P. JOHNSON
CBM

CBM.

[fol. 225] Group Exhibit 6.

St. Louis—May 4, 1931.

File 900—CBM.

Mr. M. Eckert:

For your information wish to advise that the remittance of $250,000.00 recently made by New Orleans, Texas & Mexico Ry. Co. has been applied in partial payment of interest due this Company on Advances, reducing the amount to $117,430.56 as of April 30, 1931.

F. P. JOHNSON
CBM

Mr Eckert

Will be handled accordingly

ELB 5/6/31

CBM.

[fol. 226] Group Exhibit 7.

St. Louis—August 27, 1931.
File 900-CBM.

Mr. M. Eckert:

Cash remittance of $200,000.00 received today will be applied $192,387.93 in payment of interest to July 31, 1931 and $7,612.07 in part payment of advance made January 31, 1929.

F. P. JOHNSON
CBM

CBM.

c. c. Mr. W. Wyer.

[fol. 227] Group Exhibit 8.

Saint Louis—October 19, 1931
File 900-CBM

Mr. M. Eckert:

Please be advised that remittance of $75,000.00, received today, has been applied as follows:

In part payment of advance made January 31, 1929	$23,594.26
In payment of Interest for August 1931	25,599.61
In payment of Interest for September 1931	25,806.13
	$75,000.00

F. P. JOHNSON
CBM

CBM.

cc–Mr. Wm. Wyer.

[fol. 228] Group Exhibit 9.

St. Louis—December 28, 1931.

File 900-CBM.

Mr. M. Eckert:

Remittance of $100,000.00 received today, has been applied as follows:

In payment of balance of advance made Jan. 31, 1929	$ 18,793.67
In part payment of advance made Feb. 28, 1929	21,208.58
In payment of interest for October 1931	30,178.82
In payment of interest for November 1931	29,818.93
	$100,000.00

F. P. JOHNSON
CBM

CBM.

c. c. Mr. W. Wyer.

[fol. 229] Group Exhibit 10.

Saint Louis—March 10, 1932.

Mr. M. Eckert:

Replying to yours of the 8th inst. file B-220.1 MP remittances of $525,000.00 received by the Missouri Pacific from N. O. T. & M. during the month of February 1932, have been applied as follows:

In payment of balance of Advance made February 28, 1929	$228,791.42
In part payment of Advance made March 30, 1929	232,083.51
In payment of interest for December 1931	31,930.94
In payment of interest for January 1932	32,194.13
	$525,000.00

C. B. MILSOM

CBM.

[fol. 229a] (Group Exhibit 11.)

Group Exhibit 11 is the Proof of Claim of Missouri Pacific Railroad Company, and is the same as Comstock Exhibit 1 appearing at folio page 1 of this Volume of Exhibits and for that reason is not reprinted at this place in the record.

[fol. 230] Group Exhibit 12.

Houston, July 26, 1933

Mr E F Barnes, Jr:

Referring to my telephone conversation with Mr. Post this morning.

Our Treasurer has arranged for New Orleans, Texas & Mexico Railway Company to transfer by wire today to Boatmen's Bank, St Louis, the sum of $100,000 to be credited to the account of the Missouri Pacific Railroad.

He has also arranged for International-Great Northern Railroad Company to transfer by wire today to Boatmen's Bank, St Louis, the [sume] of $100,000 to be credited to the account of the Missouri Pacific Railroad.

We will also mail from Palestine on the Texan today vouchers in payment of Missouri Pacific Railroad bills as follows

Gulf Coast Lines.....$42,000
International-Great Northern 36,000

which should reach Mr Johnson tomorrow morning.

It is understood that the sums transferred by both New Orleans, Texas & Mexico Railway and International-Great Northern Railroad will apply on the interest due the Missouri Pacific Railroad on advances to each of these companies.

(S) J E ANDERSON

Copy to Mr F P Johnson
Blind copy to Messrs
Eckert
Werner
Naylor

Vol. 231] Group Exhibit 13.

Saint Louis, August 30, 1932

Mr. M. Eckert:

Remittance of $225,000.00 received August 26, has been applied as follows:

In part payment of advances made March 30, 1929	$ 56,828.15
In payment of interest to August 31, 1932	168,171.85
Total	$225,000.00

F. P. JOHNSON

Mr. Wm. Wyer.

Vol. 232] Group Exhibit 14.

St. Louis—March 29, 1933
File 900-CGW.

Mr. M. Eckert:

Remittance in amount of $100,000.00 received from New Orleans, Texas & Mexico Ry. Co. yesterday, has been applied in our accounts to interest on advances, viz.:—

September 1932	$ 40,235.32
October 1932	45,521.76
November 1932 on account	14,242.92
	$100,000.00

F. P. JOHNSON.
C. G. W.

W:AR

E S B

e remittance was so
olied and the amounts
ee with our accruals

CWB 3/31

[fol. 233] Group Exhibit 15.

St. Louis—March 29, 1933

File 900-CGW.

Mr. M. Eckert:

Remittance in amount of $75,000.00 received from New Orleans, Texas & Mexico Ry. Co. today, has been applied in our accounts to interest on advances, viz:

November 1932—Balance	$36,167.83
December " —On Account	38,832.17
	$75,000.00

F. P. JOHNSON.
C. G. W.

CGW:AR E S B

The remittance was so applied and the amounts agree with our accruals.

CWG 3/31

Locos. Owned as of 12/31					
Average Tractive Power					
	36,908	37,141	37,689	37,932	
Locos. Purchased	-	8	-	-	
Locos. Acquired with Addtl. Subsidiary Lines	-	-	-	-	
Total	-	8	-	-	
Locomotives Retired	-	-	48	8	
Locomotive Miles (Thous.)	2,111	2,213	2,418	2,378	
Locomotive Repair Costs (Thous.)	$ 985	$ 698	$ 897	$ 884	$
Cost per Locomotive Owned	$10,688	$6,734	$8,712	$8,687	$
Cost per Locomotive Mile (Cents)	.3021	.2822	.2221	.2218	
Locomotive Failures	169	152	106	102	
Avg. Miles per Failure (Thous.)	20	29	25	26	
Locos. Inspected by I.C.C. Inspectors 6/30	Not	99	96	86	
Locomotives Found Defective	A-	22	20	28	
Per Cent Defective	vail-	22	21	70	
Locos. Ordered out of Service by ICC Inspctrs.	able	11	14	7	
Freight Cars Owned 12/31	3,585	4,246	4,538	4,116	4
Freight Cars Purchased	80	600	-	-	
Freight Cars Acquired with Addtl. Subsidiary Lines	-	-	186	18	
Total	80	600	186	18	
Freight Cars Retired	87	87	164	255	
Freight Car Miles (Thous.)	45,770	56,818	48,840	46,107	42
Freight Car Repair Costs (Thous.)	$ 754	$ 625	$ 482	$ 545	$
Cost per Freight Car Owned	$ 210	$ 144	$ 97	$ 128	$
Cost per Freight Car Mile (Cents)	.0148	.0170	.0105	.0118	
Passenger Cars Owned 12/31	95	95	90	89	
Passenger Cars Purchased	18	-	-	-	
Passenger Cars Acquired with Addtl. Subs. Lines	-	-	-	-	
Total	18	-	-	-	
Passenger Cars Retired	1	-	5	1	
Passenger Car Miles (Thous.)	8,069	7,389	7,227	7,483	7
Passenger Car Repair Costs (Thous.)	$ 340	$ 201	$ 126	$ 178	$
Cost per Passenger Car Owned	$3,642	$2,126	$1,405	$1,947	$2
Cost per Passenger Car Mile (Cents)	.0422	.0272	.0175	.0238	
No. of R. and Shops Employees					
Foremen	28	30	28	26	
Mechanics	393	308	239	300	
Others					

Group Exhibit 16.

GULF COAST LINES AND SUBSIDIARIES
(Mississippi Central RR Co.)

INCLUSIVE DATA

1925	1926	Average 1920 to 1926 inc.	1924	1925	1926	1927	1928	1929	1930	1931	Average 1925 to 1931 inc.
94	98	94	106	113	115	120	113	120	120	120	120
37,649	37,042	37,976	37,021	37,974	39,134	31,925	31,494	31,670	32,093	28,626	31,076
-	-	1	2 MR	-	10	15*	-	-	-	-	5
-/-	-/-	-/1	1/1	10/10	1/1	1/15	-/-	-/-	-/-	-/-	1/5
-	-	1	-	-	-	10	-	1	10	7	5
2,628	2,570	2,627	2,073	4,210	4,052	4,909	4,974	5,209	5,156	4,251	4,906
$ 297	$ 254	$ 271	$ 276	$ 906	$1,225	$1,226	$1,209	$1,211	$1,150	$ 511	$1,126
$8,712	$6,627	$7,128	$5,695	$7,636	$9,126	$9,187	$9,064	$8,712	$8,919	$4,648	$8,115
.021	.015	.022	.107	.016	.024	.022	.025	.029	.023	.107	.024
106	102	125	104	111	84	25	80	22	14	17	45
29	26	21	20	22	75	119	62	199	202	204	111
94	54	65	134	126	127	122	219	216	229	270	203
29	28	30	66	74	61	68	29	16	17	5	41
61	70	60.3	53	29	45	30	13	7	6	1	20.3
14	7	11	17	26	13	15	5	-	1	-	8
4,338	4,116	4,096	4,063	5,077	5,111	5,063	5,085	4,978	4,636	4,365	4,922
-	-	215	-	1,230	20	20	15	120	-	-	208
156	15	42	10	94	26	17	-	-	-	-	29
156	15	256	10	1,344	76	37	15	120	-	-	227
164	236	116	88	235	42	98	35	177	142	471	185
50,840	46,107	43,282	45,928	77,985	95,007	90,660	88,478	93,426	91,947	73,628	87,386
$ 420	$ 345	$ 384	$ 682	$ 717	$ 861	$ 700	$ 881	$ 650	$ 647	$ 486	$ 666
$ 97	$ 125	$ 148	$ 169	$ 141	$ 172	$ 129	$ 116	$ 121	$ 134	$ 111	$ 128
.0103	.0118	.0130	.0107	.0092	.0093	.0077	.0066	.0070	.0070	.0066	.0076
90	89	91	106	129	146	148	135	129	121	117	132
-	-	4	11	2	12	12	-	-	-	-	4
-	-	-	12	24	6	11	-	1	-	-	6
-	-	4	23	26	18	23	-	1	-	-	10
3	1	1	7	2	1	21	13	7	8	4	8
7,237	7,483	7,525	8,006	10,846	11,480	12,047	12,404	12,408	12,515	10,428	11,754
$ 126	$ 178	$ 210	$ 177	$ 193	$ 214	$ 196	$ 183	$ 206	$ 247	$ 114	$ 193
$1,405	$1,947	$2,208	$1,684	$1,496	$1,445	$1,328	$1,287	$1,297	$2,041	$ 974	$1,445
.0175	.0212	.0279	.0221	.0178	.0186	.0163	.0147	.0166	.0197	.0109	.0165
36	36	35	41	37	38	40	37	39	35	46	38
229	300	310	337	374	375	323	310	306	316	349	321
321	344	337	377	408	384	307	478	476	495	434	484
588	680	682	755	913	967	866	839	842	894	731	865

Others											
Total											
Total Man Hours (Thous.)	2,138	1,852	1,979	1,794	1,846	2,089	2,005	2,638	2,677	2,867	2,
M. of E. Expenditures											
Locomotive Repairs (Thous.)	$ 935	$ 888	$ 897	$ 806	$ 871	$ 978	$ 908	$1,228	$1,284	$1,269	$1,
Passenger Car Repairs (Thous.)	240	201	126	178	210	177	193	214	196	189	
Freight Car Repairs (Thous.)	734	625	490	845	884	682	727	881	700	881	
Work Equipment Repairs (Thous.)	108	84	89	88	46	10	97	101	98	65	
Depreciation (Thous.)	112	139	286	234	309	312	284	408	484	479	
Retirements (Thous.)	4	45 Cr.	10 Cr.	3 Cr.	13 Cr.	15 Cr.	4	80	38	7	
Miscellaneous Accounts (Thous.)	101	108	881	104	814	888	841	844	444	888	
TOTAL - M. of E. Expenditures (Thous.)	$2,838	$1,908	$1,818	$1,772	$1,822	$1,971	$2,282	$3,281	$3,888	$3,972	$2,
M.of E. Ratio to Operating Revenue	18.21	15.46	14.88	14.33	15.76	15.15	15.92	16.07	16.92	15.92	15

*Includes one secondhand locomotive.
Includes one locomotive, adjusted account error in number of locomotives owned shown in previous years.

	2,126	1,822	1,579	1,794	1,845	2,039	2,306	2,626	2,477	2,367	2,374	2,225	1,923	2,242
	$ 926	$ 889	$ 857	$ 806	$ 871	$ 875	$ 908	$1,225	$1,206	$1,229	$1,211	$1,120	$ 811	$1,126
.)	240	221	126	178	210	177	198	214	196	183	206	247	114	198
	734	625	490	845	896	682	717	881	700	801	680	647	486	646
.)	108	24	28	28	45	10	87	101	90	65	61	68	81	72
	112	139	286	294	309	312	284	403	426	479	472	430	423	482
	4	48 Cr.	10 Cr.	3 Cr.	13 Cr.	15 Cr.	4	20	30	7	18 Cr.	117	13	30
.)	101	108	201	104	214	220	241	241	414	298	292	274	211	201
(Thous.)	$2,425	$1,902	$1,818	$1,772	$1,922	$1,971	$2,221	$2,551	$2,265	$2,272	$2,221	$2,013	$2,229	$2,256
	18.21	18.66	14.85	14.33	18.76	13.15	18.92	14.07	14.92	15.02	15.76	14.98	16.89	16.28

tive.
tal account error in number of locomotives owned shown in previous years.

GULF COAST LINES & SUBSIDIARIES

MISCELLANEOUS M. OF W. & S. INFORMATION, REVENUE TON MILES, MAN HOURS, ETC.
AND TOTAL M. OF W. & S. EXPENSES

	Y 1920	E 1921	A 1922	R 1923	Total
Rail Laid - Gross Tons - New	4,389	2,716	3,845	5,627	14,575
- Relay	1,857	3,048	4,875	3,473	13,251
Cross Ties Renewed - Each	354,309	275,259	280,245	239,134	1,148,947
Percent Creosoted in Track	5.0	6.0	11.0	16.6	-
Maintenance - Patch Ballast - Cubic Yards	120,622	26,395	51,705	55,883	254,605
Lineal Feet of Bridges Renewed	3,593	5,970	7,427	14,925	31,915
Mileage - Main Track	1,000.54	999.21	1,003.42	1,003.39	-
- Second Main Track	-	-	-	1.32	-
- Other Tracks	257.79	264.99	266.92	268.71	-
- Total	1,258.33	1,264.20	1,270.34	1,273.32	-
Revenue Ton Miles - (In Thousands)	679,340	515,205	545,660	634,557	2,374,760
Total Number of Section Foremen	98	92	89	91	-
Total Number All M. of W. Employes	2,038	1,250	1,110	1,301	-
Total Man Hours - All M. of W. Employes	5,202,069	2,691,918	2,645,955	2,945,467	-
Total M. of W. & S. Expenses	$3,275,143	$2,140,969	$1,978,060	$2,005,237	$9,399,514

Office of Chief Engineer,
Houston, Texas,
January 8, 1945.

GULF COAST LINES & SUBSIDIARIES

Group Exhibit 17.

MISCELLANEOUS M. OF W. & S. INFORMATION, REVENUE TON MILES, MAN HOURS, ETC.
AND TOTAL M. OF W. & S. EXPENSES

	Y E A R 1920	1921	1922	1923	Total	Average	1924
	4,389	2,716	3,643	3,627	14,375	3,594	10,000
y	1,857	3,045	4,875	3,473	13,251	3,313	5 668
	354,399	275,259	280,245	239,134	1,148,947	287,237	492,415
	5.0	6.0	11.0	16.6	-	-	30.1
Cubic Yards	120,622	26,395	51,705	55,883	254,605	63,651	73,259
d	3,595	5,970	7,427	14,925	31,913	7,978	12,652
	1,000.54	999.21	1,005.42	1,005.39	-	1,001.64	1,046.42
	-	-	-	1.22	-	0.51	1.22
	257.79	284.99	286.92	288.71	-	284.60	290.98
	1,258.35	1,284.20	1,270.34	1,275.52	-	1,266.55	1,338.62
ands)	679,340	515,205	545,660	634,557	2,374,760	593,690	825,254
en	93	92	89	91	-	93	98
loyes	2,038	1,250	1,110	1,301	-	1,424	1,649
. Employes	5,202,099	2,691,918	2,645,933	2,945,467	-	3,570,847	3,744,243
	$5,275,148	$2,140,969	$1,978,060	$2,005,357	$9,399,514	$2,349,879	$2,729,805

GULF COAST LINES & SUBSIDIARIES

MISCELLANEOUS M. OF W. & S. INFORMATION, REVENUE TON MILES, MAN HOURS, ETC.
AND TOTAL M. OF W. & S. EXPENSES

	1925	1926	1927	1928	1929	1930	19
Rail Laid - Gross Tons - New	3,940	11,602	7,286	3,775	4,990	6,254	2
- Relay	5,557	1,232	3,797	968	180	262	
Cross Ties Renewed - Each	492,622	717,506	584,040	542,424	428,640	386,364	225
Per Cent Creosoted in Track	43.5	52.2	62.4	71.5	78.6	85.0	
Maintenance - Patch Ballast - Cubic Yards	75,039	129,513	138,632	126,232	107,742	85,274	60
Lineal Feet of Bridges Renewed	16,998	18,625	11,010	10,795	5,922	5,587	3
Mileage - Main Track	1,412.38	1,591.90	1,619.49	1,669.57	1,669.74	1,669.74	1,66
- Second Main Track	1.22	1.22	1.22	1.22	1.22	1.22	
- Other Tracks	328.64	369.39	397.84	417.13	444.08	452.88	46
- Total	1,742.24	1,962.51	2,018.55	2,087.92	2,115.04	2,123.84	2,13
Revenue Ton Miles - (In Thousands)	895,407	988,956	949,672	968,770	1,030,410	1,047,764	724
Total Number of Section Foremen	123	168	181	179	180	180	
Total Number - All M. of W. Employes	1,759	2,439	2,172	2,088	2,127	1,907	1
Total Man Hours - All M. of W. Employes	3,726,544	5,985,450	5,258,110	5,086,561	5,075,609	4,583,517	3,246
Total M. of W. & S. Expenses	$2,496,902	$4,020,976	$4,215,953	$3,435,559	$3,369,547	$3,269,999	$2,150

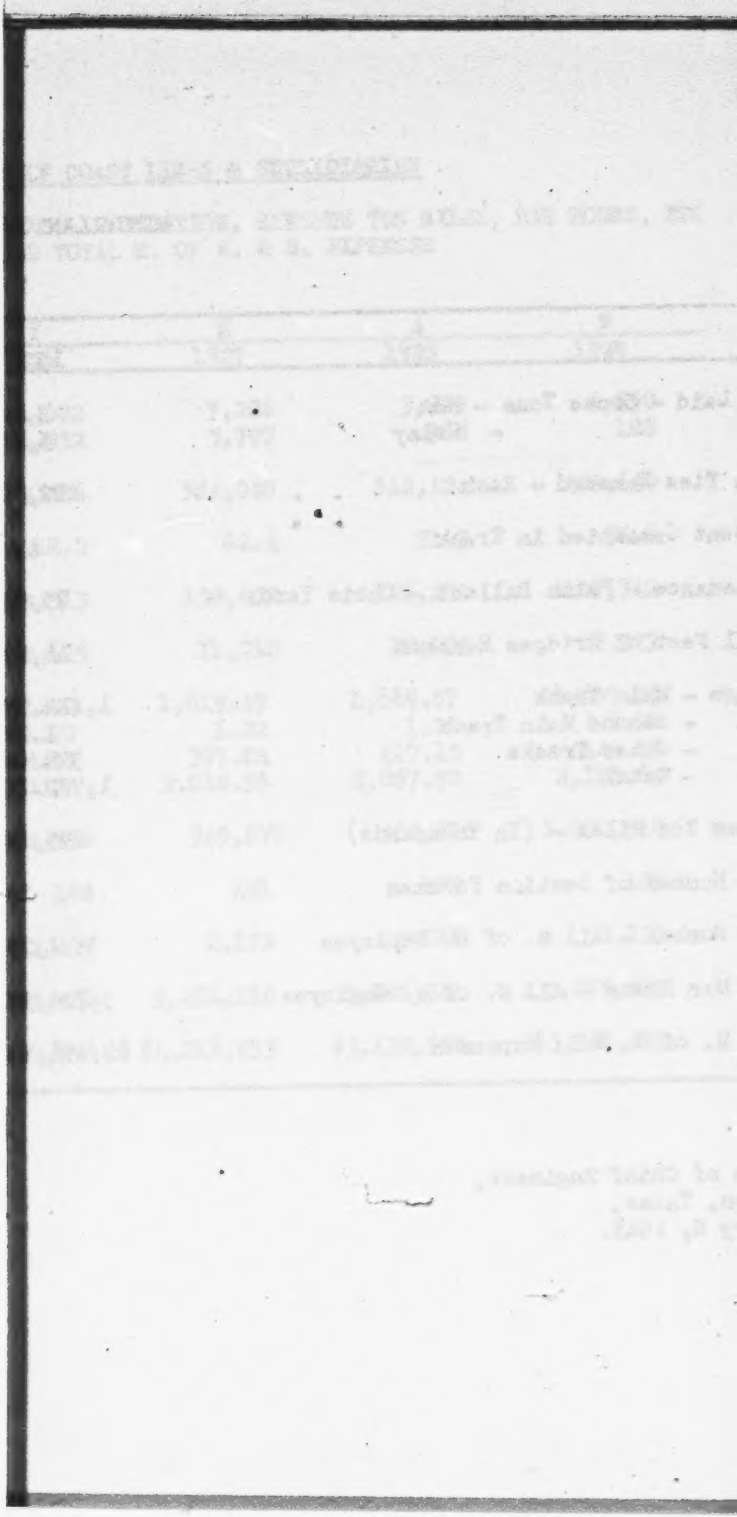
Office of Chief Engineer,
Houston, Texas,
January 8, 1945.

GULF COAST LINES & SUBSIDIARIES

Group Exhibit 17.

MISCELLANEOUS M. OF W. & S. INFORMATION, REVENUE TON MILES, MAN HOURS, ETC.
AND TOTAL M. OF W. & S. EXPENSES

	1925	Y 1926	E 1927	A 1928	R 1929	1930	1931	Total	Average
	3,940	11,602	7,286	3,775	4,990	6,254	2,494	40,341	5,763
	5,557	1,232	3,797	968	180	262	-	11,996	1,714
	492,622	727,506	584,040	542,424	428,640	386,364	225,583	3,377,179	482,454
	43.5	52.2	62.4	71.5	78.6	85.0	88.7	-	-
Cubic Yards	75,039	129,513	138,632	126,232	107,742	85,274	60,259	722,691	103,242
	16,998	18,625	11,010	10,795	5,922	5,587	3,176	72,113	10,302
	1,412.38	1,391.90	1,619.49	1,669.57	1,669.74	1,669.74	1,688.75	-	1,617.36
	1.22	1.22	1.22	1.22	1.22	1.22	1.22	-	1.22
	328.64	369.39	397.84	417.13	444.08	452.88	460.58	-	410.08
	1,742.24	1,962.51	2,018.55	2,087.92	2,115.04	2,123.84	2,150.55	-	2,028.66
nds)	895,407	988,956	949,672	968,770	1,030,410	1,047,764	724,211	6,605,190	943,599
n	123	168	181	179	180	180	157	-	167
ployes	1,759	2,439	2,172	2,088	2,127	1,907	1,332	-	1,975
Employes	3,726,544	5,985,450	5,258,110	5,086,561	5,075,609	4,583,517	3,246,653	-	4,709,197
	$2,496,902	$4,020,976	$4,215,953	$3,435,559	$3,369,547	$3,269,999	$2,150,979	$22,959,915	$3,279,988



[fol. 237] Group Exhibit 18.

In the District Court of the United States,
Eastern Division, Eastern Judicial
District of Missouri

In the Matter of Missouri Pacific Railroad
Company, Debtor

In Proceedings for the Reorganization of a Railroad,
No. 6935
Gulf Coast Lines

Statement of C. S. Kirkpatrick concerning Additions and Betterments to Road, Period 1925 to 1932

The following statement is made with reference to the principal improvements made to the main lines from Brownsville to Baton Rouge, including feeder lines in the Rio Grande Valley, during the period 1925 to 1932:

During the eight years ended December 31st, 1932, the Gulf Coast Lines expended on its principal lines approximately $11,482,400, chargeable to Road, the majority of which was for improvements to existing roadway, but there is included about $1,700,000 for the construction of 80.1 miles of new lines and extensions in the Rio Grande Valley. The extension of the Southern Pacific into the Rio Grande Valley which project was started in 1926 and completed in 1927, created a strong competitive situation in this territory. The improvements were absolutely necessary to meet the competition and to provide the class of service demanded from the Rio Grande Valley and other southwest territory to Kansas City and St. Louis

The expenditures chargeable to Road for Addition and Betterment work during the period under consideration are shown below:

Year	Charges to Road
1925	$ 1,096,461.02
1926	1,962,515.06
1927	2,298,658.26
1928	1,574,652.32
1929	2,356,387.33
1930	1,136,492.75
1931	633,336.23
1932	423,917.84
Total	$11,482,420.81

The total shown above of $11,482,420.81 was spent for improvement projects as follows:

1. New Lines and Extensions:

During this period new lines and extensions, all in the Rio Grande Valley, were constructed as follows:

Location	Miles	Date Completed	Cost
Raymondville to Edinburg	30.11	12- 1-26	$ 667,881
Faysville to Monte Christo	9.97	12- 1-26	133,230
Hargill to Ed Couch	11.07	12- 1-26	207,289
Raymondville to Santa Monica	19.30	3- 1-28	351,832
Ed Couch to Weslaco	9.67	1-30-30	349,458
Total	80.12		$1,709,690

[fol. 238] 2. Rail Renewal Projects:

Expended—$1,401,150.

The principal items included in this project are as follows:

	Track Miles
Replacing 65-lb. rail with 75-lb. relay rail	10.3
Replacing 65# and 75# rail with relay 80# rail	86.1
Replacing 75# and 80# rail with new 85# rail	29.9
Replacing 75# and 80# rail with new 90# rail	239.1
Total	365.4

Additional tie plates installed.....3,269,800
Additional rail anchors installed..... 276,750

Carrying out the above rail program resulted in the removal of 335 miles of lighter section rail out of a total of 383 miles in the primary lines of the StLB&M between Algoa and Brownsville and the Hidalgo Branch. In addition 30 miles of new 85-lb. rail was laid on the NOT&M between Lottie and Anchorage, La., completing the renewal of light rail on the line between Houston, Texas, and Anchorage, La., which program was commenced in 1920. Considerable improvements were also made in branch lines and passing tracks by the replacement of 52-lb. to 60-lb. rails with 65-lb. to 75-lb. rails recovered from the above main line relays.

3. Ballasting Projects:

Expended during period—$1,555,578.

796,500 cubic yards of improvement ballast was applied resulting in ballasting of 330 miles of main line that had heretofore not been ballasted or requiring a heavier section, as well as ballasting yards and sidings not previously ballasted.

4. Bridges, Trestles & Culverts:

Expended—$1,353,400.

On December 31st, 1924, there were various classes of structures on the Gulf Coast Lines as shown below:

Lineal feet of open deck untreated trestles	95,574
Lineal feet of open deck creosoted trestles	32,042
Lineal feet of steel bridges	7,396
Total	135,012

During the period renewal of these trestles were made using various types:

Renewed with creosoted open deck trestles—	L. F.	45,579
Renewed with creosoted ballast deck trestles—	"	3,882
Renewed with concrete ballast deck trestles—	"	888
Open deck trestles filled	— "	9,585

So that, in the eight years ended December 31, 1932, 39% of all pile trestles on those lines have been renewed with creosoted material. In addition to the above improvements in bridges, 37,268 lin. ft. of pile trestles were reinforced to take care of heavier power.

[fol. 239] 5. Fuel and Water Facilities:

Expended—$130,540.

Two large fuel oil storage tanks, one at Harlingen, the other at Kingsville, increasing oil storage capacity 130,000 barrels, were installed. Six new water stations and various and sundry improvements to these facilities, such as improved pumps, feed water treaters, etc. were carried out. Account of increasing the size of engine tanks on locomotives and improving operating conditions it has been possible to increase the distance between water stops and a great many stations have been abandoned. The expenditure shown above is net.

6. Shops and Engine Houses:

Expended—$364,940.

During this period shop facilities at DeQuincy were completely rebuilt, enlarged and electrified, making provision for heavy repairs to locomotives. New engine handling facilities were constructed at Harlingen and a longer and heavier turntable was installed at Kingsville.

7. New Yard Tracks, Sidings and Industry Tracks:

Expended—$1,460,400.

During this period there was constructed 88.51 miles of yard sidings and industry tracks to meet the development and provide for increased business. In addition to providing the required passing tracks along the lines there was a complete revamping of facilities in the vegetable and citrus growing section, Lower Rio Grande Valley, and additions and extensions provided to take care of the [phenominal] growth during the eight years. Some of the important items included are train yards and icing facilities at Harlingen, Kingsville and Vanderbilt.

8. Signals and Interlockers:

Expended—$436,410.

The major items under this project were the construction of automatic block signals from Houston to Trinity River, 34 miles, and from DeQuincy to Kinder, 36 miles, a total of 70 miles. There was also constructed at various railroad crossings, to eliminate train stops, eleven interlocking plants. This work was carried out in order to [expediate] movement of perishable products originating in the Rio Grande Valley and to improve transportation service generally and promote safety.

9. Telegraph and Telephone:

Expended—$107,700.

During the period there were 1,143 miles of telegraph and telephone circuits constructed in order to more efficiently handle the business and to provide telephone dis-

patching. Telephones were installed at each end of all passing tracks for the purpose of expediting train movements.

[fol. 240] 10. Roadway Machines:

Expended—$60,700.

While this is a small investment to be listed under major items, yet it is felt this equipment should be referred to. These lines are fully equipped with ballast discers, wood-burners and track mowers, and they are of great economic value in the way of preserving ballast, keeping it clean and permitting it to drain freely, and the heavy growth of vegetation in this section make them the greatest money and labor saving devices we have for the investment.

11. Shop Machinery and Appurtenances:

Expended—$348,080.

During the period substantially all old and obsolete machinery has been removed from shops at Kingsville and DeQuincy and replaced with modern and up-to-date equipment.

12. Land for Industrial Development Projects:

Expended—$435,000.

The growth of the territory, particularly the Lower Rio Grande Valley, has made it necessary to acquire land for the establishment of shipping facilities. These lines have not followed the practice of buying large tracts of land and holding them, but rather have followed the plan of providing property if and when needed. Changes in development and the expansion of residential and business sections has made it unwise and impossible to forecast definitely in advance what should be done in this fast growing section of southwest Texas.

13. New Station Facilities:

Expended—$1,264,840.

The largest expense included in the above is approximately $850,000 for the construction of fruit and vegetable packing sheds in the Rio Grande Valley which was necessary to enjoy our portion of the high class tonnage originating in this competitive territory. Also during the period there was constructed freight and passenger station facilities to meet the development of the territory. Major items are new freight stations at Harlingen, San Benito, San Juan, Edinburg and Raymondville. New passenger stations at Brownsville, Edinburg, Weslaco, San Benito and San Juan. The development mentioned has been confined to the Rio Grande Valley, but in addition there has been development of facilities at many points on the line.

14. Bank Widening Projects:

Expended—$147,000.

During the period there has been 358,000 cubic yards of material used in increasing the width of banks. In the low lands of East Texas and Louisiana, main line embankments have been widened to 22 ft. and in Texas all primary main lines to 20 ft. and subsidiary lines to 16 ft. and 18 ft. With few exceptions, work of this class has been practically completed on these lines for many years to come.

[fol. 241] 15. Rio Grande Valley Flood Control Projects:

Expended—$176,800.

During the period the Rio Grande Valley planned and carried out a flood control project which required construction of bridges across floodways at two different locations and the raising of the track. Heretofore at intervals of ten or twelve years the railroad has been subject to overflow, and these projects were entered into and carried out to secure a more dependable route for the heavy perishable traffic out of the Rio Grande Valley and to promote the safety and convenience of the public.

16. River and Bank Protection:

Expended—$92,180.

During this period bank protection had to be undertaken at three major stream crossings, namely, Mississippi, Trinity and Atchafalaya Rivers in order to prevent wash and in connection with government flood control work on the Mississippi.

17. Assessments for Public Improvements:

Expended—$78,688.

This expense covers railway's portion of paving in municipalities along its line. Charges to this account have been held to a minimum and primarily confined to the rapidly developing section of the Lower Rio Grande Valley.

18. Roadway Buildings:

Expended—$53,615.

During the period only such charges were made to this account so as to maintain adequate living quarters for track foremen and laborers. There was no definite program of building or rebuilding section layouts.

19. Crossings and Signs:

Expended—$233,569.

Within the past eight years 29 automatic crossing signals were installed on important highway and street crossings where vehicular traffic is heavy. In addition grade separation was accomplished at four points and in all cases we were successful in participating only to the extent of a minor portion of the total cost. Improved type highway crossings were installed at numerous points.

20. Power Plant Buildings and Appurtenances:

Expended—$40,500.

This expense covers cost of building new power plant and equipment at DeQuincy, La., to more efficiently and economically handle heavy engine repairs at that point.

21. Storage Warehouse:

Expended—$20,444.00.

The heavy movement of fruit from the Rio Grande Valley and the concentration of this product at Harlingen necessitated the construction of a brick storage warehouse at that point to properly handle the business.

[fol. 242] Group Exhibit 19.

Gulf Coast Lines

(StLB&M, SB&RGV, Rio Grande Valley and Corpus Christi Section)

Fruit & Vegetable Loading (Cars) by Seasons

1921-22 to 1943-44, Incl.

	Vegetables	Citrus	Total
1921-22	6,381	13	6,394
1922-23	3,411	51	3,462
1923-24	12,417	115	12,532
1924-25	12,017	534	12,541
1925-26	15,123	291	15,414
1926-27	14,969	756	15,725
1927-28	16,484	1,016	17,500
1928-29	18,822	1,451	20,273
1929-30	17,770	3,377	21,147
1930-31	20,809	2,227	23,036
1931-32	15,246	5,274	20,520
1932-33	13,445	2,698	16,143
1933-34	14,732	1,491	16,223
1934-35	8,123	3,733	11,856
1935-36	17,567	3,459	21,026
1936-37	17,279	13,732	31,011
1937-38	13,061	11,238	24,299
1938-39	13,003	13,152	26,155
1939-40	12,061	9,610	21,671
1940-41	13,731	7,955	21,686
1941-42	19,134	12,703	31,837
1942-43	19,927	16,001	35,928
1943-44	27,648	16,178	43,826
	343,160	127,045	470,205

1-8-45

[fol. 243]

Group Exhibit 20.

Fruits & Vegetables Via Gulf Coast Lines

StLB&M, SB&RGV, Rio Grande Valley and Corpus Christi Section—Seasons 1924-25 to 1930-31, Incl. Via Kinder-Alexandria-Mo. Pac. R. R. Route

Showing Citrus & Vegetables, Separately

	Via Kinder-Alexandria Route				Movement Gulf Coast Lines Via All Junctions			
Seasons	Citrus	Vegetables	Total Citrus & Vegetables	Percent of Citrus to Total	Citrus	Vegetables	Total Citrus & Vegetables	Percent of Total Via Kinder-Alexandria Route
1924-25	316	7,209	* 7,525	4.2	534	12,017	12,541	* 60.0
1925-26	144	9,104	* 9,248	1.9	291	15,123	15,414	* 60.0
1926-27	462	8,973	* 9,435	4.9	756	14,969	15,725	* 60.0
1927-28	660	10,716	11,376	5.8	1,016	16,484	17,500	65.0
1928-29	1,018	13,119	14,137	7.3	1,451	18,822	20,273	69.7
1929-30	2,188	11,926	14,114	15.5	3,277	17,770	21,147	66.7
1930-31	1,725	16,060	17,785	9.7	2,227	20,799	23,026	77.2

* Basis Estimate 60% of Total Via Kinder-Alexandria, Actual Distribution not available.

1-8-45

[fol. 244]

Group Exhibit 21.

Interchange

Gulf Coast Lines With Missouri Pacific at Kinder, La.

and

Gulf Coast Lines With Y. & M. V. (Illinois Central) at Baton Rouge, La.

Year	Missouri Pacific Kinder, La.		Yazoo and Mississippi Valley (Illinois Central) Baton Rouge, La.	
	Carloads Received by G. C. L.	Carloads Delivered by G. C. L.	Carloads Received by G. C. L.	Carloads Delivered by G. C. L.
1922	1,392	2,309	4,276	14,253
1923	2,304	1,943	5,756	15,953
1924	12,183	3,440	5,867	22,076
1925	15,118	13,148	3,513	22,472
1926	26,811	18,562	3,656	17,680
1927	19,378	16,134	2,801	11,825
1928	22,798	21,081	1,661	10,291
1929	23,413	27,916	4,309	11,692
1930	23,441	35,838	3,379	9,976
1931	19,215	30,450	3,004	6,359

1-8-45

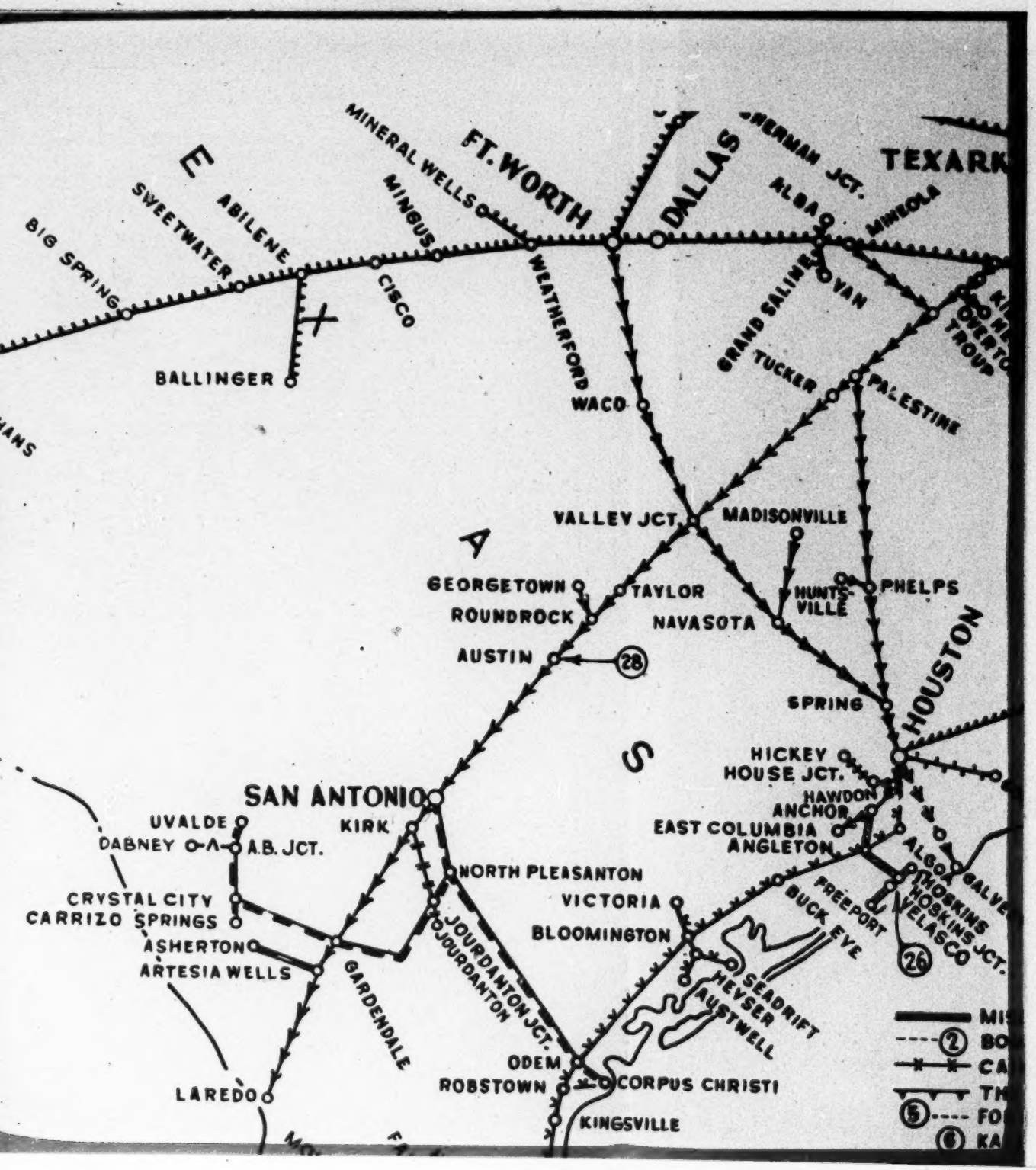
[fol. 245]

Group Exhibit 22.

Statement of Carloadings for All Class One Railroads in the United States, Years 1922 to 1931, Inclusive, With Percentages Shown in Ratio to 1924, Used as the 100% Year; Also Carloads Received by Gulf Coast Lines for Years 1922 to 1931, Inclusive, With Percentages in Ratio to 1924, Used as the 100% Year.

	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
Total Carloadings for all Class 1 Roads in United States	89.0%	102.6%	100.0%	105.5%	109.4%	106.4%	106.3%	108.8%	94.5%	76.5%
	43,207,561	49,812,113	48,534,433	51,224,153	53,098,819	51,635,806	51,589,887	52,827,925	45,877,974	37,151,349
Total Carloads Received by G. C. L. from all Roads	83.9%	85.7%	100.0%	117.0%	125.7%	121.1%	117.8%	124.3%	113.4%	98.3%
	58,643	78,649	91,826	107,461	117,543	111,209	108,193	114,559	103,221	90,679
Total Carloads Received by G. C. L. from M. P.-I-GN	25.1%	41.2%	100.0%	132.5%	235.6%	211.8%	254.5%	265.4%	266.9%	294.1%
	4,141	6,810	16,511	21,879	38,893	34,975	42,028	43,816	44,067	48,565
Total Carloads Received by G. C. L. from all roads other than M. P.-I-GN	72.4%	95.4%	100.0%	113.7%	104.4%	101.2%	88.4%	93.9%	78.5%	56.1%
	54,502	71,839	75,315	85,602	78,651	76,234	66,164	70,743	59,154	42,124

1-8-45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SWEETWATER
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BIG SPRING
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BALLINGER
WEATHERFORD
WACO
HERMAN JCT.
ALBA
WINNSBORO
GRAND SALINE
VAN
TUCKER
PALESTINE
TROUP
VALLEY JCT.
MADISONVILLE
GEORGETOWN
TAYLOR
ROUNDROCK
AUSTIN
HUNTSVILLE
PHELPS
NAVASOTA
SPRING
HOUSTON
HICKEY
HOUSE JCT.
HAWDON
ANCHOR
EAST COLUMBIA
ANGLETON
ALGOA
HOSKINS
HOSKINS JCT.
VELASCO
SAN ANTONIO
KIRK
UVALDE
DABNEY
A.B. JCT.
NORTH PLEASANTON
CRYSTAL CITY
CARRIZO SPRINGS
ASHERTON
ARTESIA WELLS
JOURDANTON
JOURDANTON JCT.
GARDENDALE
LAREDO
VICTORIA
BLOOMINGTON
FREEPORT
BUCK EYE
SEADRIFT
MEYSER
AUSTWELL
ODEM
ROBSTOWN
CORPUS CHRISTI
KINGSVILLE
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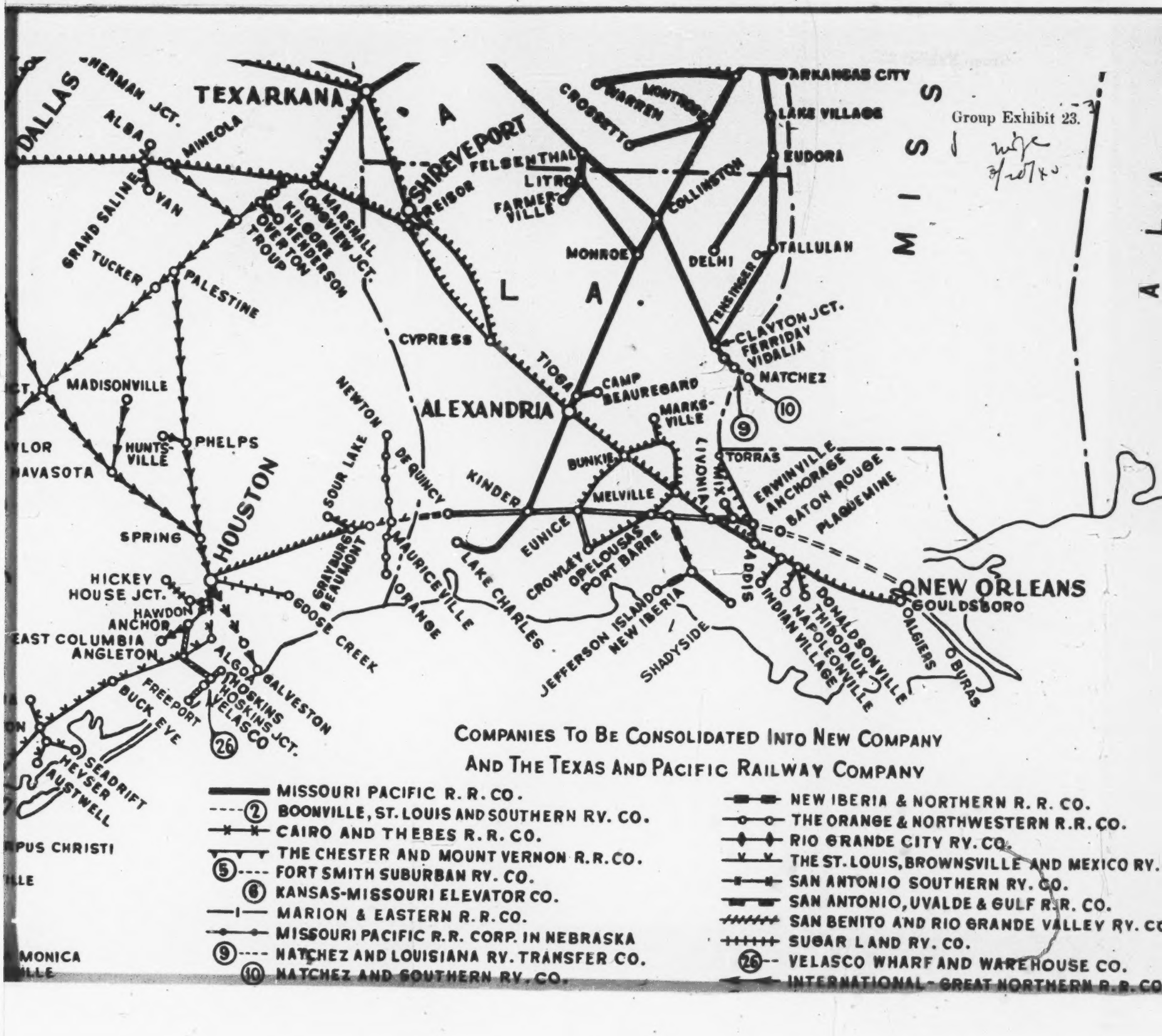
Group Exhibit 23.



COMPANIES TO BE CONSOLIDATED INTO NEW COMPANY
AND THE TEXAS AND PACIFIC RAILWAY COMPANY

- MISSOURI PACIFIC R. R. CO.
- (2) BOONVILLE, ST. LOUIS AND SOUTHERN RY. CO.
- CAIRO AND THEBES R. R. CO.
- THE CHESTER AND MOUNT VERNON R.R.CO.
- (5) FORT SMITH SUBURBAN RY. CO.
- (6) KANSAS-MISSOURI ELEVATOR CO.
- MARION & EASTERN R. R. CO.
- MISSOURI PACIFIC R.R. CORP. IN NEBRASKA
- (9) NATCHEZ AND LOUISIANA RY. TRANSFER CO.
- (10) NATCHEZ AND SOUTHERN RY. CO.
- NEW IBERIA & NORTHERN R. R. CO.
- THE ORANGE & NORTHWESTERN R.R. CO.
- RIO GRANDE CITY RY. CO.
- THE ST. LOUIS, BROWNSVILLE AND MEXICO RY.
- SAN ANTONIO SOUTHERN RY. CO.
- SAN ANTONIO, UVALDE & GULF R.R. CO.
- SAN BENITO AND RIO GRANDE VALLEY RY. CO
- SUGAR LAND RY. CO.
- (26) VELASCO WHARF AND WAREHOUSE CO.
- INTERNATIONAL-GREAT NORTHERN R.R. CO

MISSOURI PACIFIC R.R. CORP. IN NEBRASKA
(9) NATCHEZ AND LOUISIANA RY. TRANSFER CO.
(10) NATCHEZ AND SOUTHERN RY. CO.
NEW ORLEANS, TEXAS & MEXICO RY. CO. (GULF COAST LINES)
ASHERTON AND GULF RY. CO.
ASPHALT BELT RY. CO.
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.
HOUSTON AND BRAZOS VALLEY RY. CO.
HOUSTON NORTH SHORE RY. CO.
IBERIA, ST. MARY AND EASTERN R.R. CO.

SUGAR L
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(28) AUSTIN
(29) ST. JOSE
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MISSOURI PACIFIC R.R. CORP. IN NEBRASKA
(9) NATCHEZ AND LOUISIANA RY. TRANSFER CO.
(10) NATCHEZ AND SOUTHERN RY. CO.
NEW ORLEANS, TEXAS & MEXICO RY. CO. (GULF COAST LINES)
ASHERTON AND GULF RY. CO.
ASPHALT BELT RY. CO.
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.
HOUSTON AND BRAZOS VALLEY RY. CO.
HOUSTON NORTH SHORE RY. CO.
IBERIA, ST. MARY AND EASTERN R.R. CO.

SUGAR LAND RY. CO.
(26) VELASCO WHARF AND WAREHOUSE CO.
INTERNATIONAL-GREAT NORTHERN R.R. CO.
(28) AUSTIN DAM AND SUBURBAN RY. CO.
(29) ST. JOSEPH BELT RY. CO.
(30) UNION TERMINAL RY. CO.
(31) BUCHANAN ELEVATOR CO.
TRACKAGE RIGHTS
THE TEXAS AND PACIFIC RY. CO.

File No. L-1000

Group Exhibit 23.

[fol. 247] Group Exhibit 24.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6935

Gulf Coast Lines and International-Great Northern R. R. Co.

Miles of Road Owned and Operated as of December 31, 1943

	Owned	Operated Under Trackage Rights	Total
New Orleans, Texas & Mexico Ry. Co.	172.72	18.50	191.2
The Beaumont, Sour Lake & Western Ry. Co.)	84.29	34.46	146.0
Houston North Shore Ry. Co.)	27.31		
The Orange & Northwestern R. R. Co.	61.51		61.5
The St. Louis, Brownsville and Mexico Ry. Co.	559.80	46.14	605.9
New Iberia & Northern R. R. Co.)	64.74		104.3
Iberia, St. Mary and Eastern R. R. Co.)	39.63		
San Benito and Rio Grande Valley Ry. Co.	116.38	* .11	116.4
Houston and Brazos Valley Ry. Co.	36.79		36.7
San Antonio, Uvalde & Gulf R. R. Co.	314.18	2.74	316.9
Asphalt Belt Ry. Co.	18.00		18.0
Sugar Land Ry. Co.	18.92	22.62	41.5
Asherton and Gulf Ry. Co.	32.10		33.1
Rio Grande City Ry. Co.	18.03	* 2.65	20.6
San Antonio Southern Ry. Co.	29.15	15.88	45.0
Total Gulf Coast Lines	1,593.55	143.10	1,736.6
International-Great Northern R. R. Co.	1,100.89	53.62	1,154.5
Total	2,694.44	196.72	2,891.1

* Trackage rights on lines within Gulf Coast group.

Source: Company records

March 12, 1945

In the District Court of the United States, Eastern Division Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad

MISSOURI PACIFIC RAILROAD COMPANY

Investment in Road and Equipment
June 1, 1917 - December 31, 1944

	ROAD					EQUIPMENT					
Year	New Lines and Extensions	Additions and Betterments Owned and Leased Lines	Credits for Property Retired Owned and Leased Lines	Adjustments Credits	Net Charges	Additions and Betterments	Credits for Property Retired	Adjustments	Net Charges	General Expenditures Net Charges	New Lines and Extensions
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1944	$ -	$ 4,564,523	$ 1,509,966	$ -	$ 3,054,557	$ 6,387,733	$ 783,172	$ -	$ 5,604,561	$ -	-
1943	-	4,677,197	1,538,988	-	3,138,209	6,839,566	424,071	-	6,115,495	85 Cr	-
1942	-	4,533,448	2,565,815	-	1,967,633	9,506,647	1,667,000	-	7,839,647	1,999	-
1941	-	3,482,806	1,529,420	-	1,953,386	6,529,619	2,302,725	-	4,226,894	-	-
1940	175,729	2,924,749	868,568	-	2,231,910	2,976,564	2,313,574	-	662,990	-	175,729
1939	114,450	3,151,091	1,625,158	-	1,640,383	4,479,872	1,173,667	-	3,306,205	-	114,450
1938	-	2,764,736	499,687	-	2,265,071	970,195	2,019,045	-	Cr1,048,850	-	-
1937	-	3,358,813	1,142,587	-	2,416,226	7,375,790	1,848,244	-	5,527,546	-	-
1936	-	3,409,742	1,643,755	-	1,765,987	6,184,809	2,785,963	-	3,398,846	-	-
1935	-	2,028,168	2,659,583	-	Cr 631,415	1,244,372	4,153,489	-	Cr 2,909,117	-	-
1934	Cr 53,918	3,738,175	5,327,227	-	Cr1,642,970	904,405	4,668,049	-	Cr 3,763,644	-	Cr 53,918
1933	67,525	4,085,212	3,089,445	-	1,063,290	414,875	6,687,422	-	Cr 6,272,547	-	67,525
1932	284,981	2,890,773	390,189	317,050	2,468,514	178,302	7,166,001	Cr 8,491	Cr 6,996,190	-	284,981
1931	756,735	6,267,302	320,748	341,210	6,362,079	253,027	6,244,009	12,595	Cr 5,978,388	-	756,735
1930	3,765,024	14,068,594	443,701	292,850	17,097,068	11,134,446	1,758,151	171,193	9,547,488	-	3,765,024
1929	2,582,762	14,360,127	291,451	890,061	15,762,378	19,218,918	6,118,393	Cr 1,101	13,099,425	52,500	2,586,262
1928	5,122,526	11,759,214	602,083	82,669	16,196,987	1,469,602	2,299,981	-	Cr 830,379	-	5,122,526
1927	567,082	17,134,502	272,227	2,485,713	14,943,644	9,243,507	1,506,381	-	7,737,126	-	567,082
1926	370,232	14,144,327	256,199	559,549	13,698,811	8,136,955	2,499,426	-	5,637,529	-	370,232
1925	229,771	8,636,274	178,240	292,719	8,395,085	21,626,969	5,760,268	-	15,866,701	1,320 Cr	229,771
1924	934,846	7,481,519	299,512	408,610	7,708,243	15,514,312	4,458,043	Cr 17,799	11,038,465	-	934,846
1923	1,103,704	5,009,201	172,442	4,488	5,935,975	11,294,519	4,463,861	-	6,830,658	28,371	1,126,075
1922	1,099,559	3,756,421	164,349	353,278	4,339,352	4,926,094(1)	2,525,604	Cr 23,293	2,377,197	14	1,144,023
1921	-	4,388,643	211,845	D 41,949	4,418,746	5,395,010	913,392	Cr 16,330	4,465,287	1,280	-
1920	-	4,146,181	73,746	394,618	3,677,817	11,375,084	277,783	-	11,097,301	58,606	-
1919	-	350,721	186,197	1,614,741	Cr1,450,217	88,965	290,317	Cr 3,961	Cr 205,314	-	-
1918 (4)	-	2,704,167	-	-	2,704,167	481,073	-	-	481,073	48,881	-
1917 (June 1-Dec.31) (4)	(3)	1,297,457	-	-	1,297,457	2,315,016(3)	-	-	2,315,016	29,466 (3)	-
Total											17,191,343

Notes: Cr - Credit
D - Debit

1. Includes Equipment - New Lines: 1922 $44,465

2. Includes adjustment for General Expenditures of $3,120 Cr.

3. Expenditures for New Lines 1917, not shown on statement. Total amounts were as follows:

Road	$300,194,006
Equipment	45,912,885
General Expenditures	222,087
Total	$346,328,978

4. Net expenditures only for 1917 and 1918.

Source: Company Records

March 17, 1945.

In the District Court of the United States, Eastern Division Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad

Group Exhibit 25.

Witness Wyer
3/20/45 Fmk

MISSOURI PACIFIC RAILROAD COMPANY

Investment in Road and Equipment
June 1, 1917 - December 31, 1944

ROAD Credits for Property Retired Owned and Leased Lines	Adjustments Credits	Net Charges	EQUIPMENT Additions and Betterments	Credits for Property Retired	Adjustments	Net Charges	General Expenditures Net Charges	New Lines and Extensions	GRAND TOTAL Additions and Betterments Owned and Leased	Credits for Property Retired	Adjustments Credits	Net Charges
(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
$ 1,509,966	$ -	$ 3,054,557	$ 6,387,733	$ 783,178	$ -	$ 5,604,561	$ -	-	$10,952,256	$ 2,293,138	$ -	$ 8,659,118
1,538,988	-	3,138,209	6,539,366	434,071	-	6,115,495	85 Cr	-	11,216,580	1,962,901	-	9,253,619
2,565,815	-	1,967,633	9,506,447	1,667,000	-	7,839,447	1,999	-	14,045,705	4,236,486	-	9,809,279
1,529,420	-	1,958,384	4,529,419	2,308,725	-	4,226,894	-	-	10,013,485	3,732,145	-	6,280,280
868,568	-	2,231,910	2,976,564	2,313,574	-	662,990	-	175,729	5,901,313	3,182,142	-	2,894,900
1,625,158	-	1,640,383	4,479,872	1,173,667	-	3,306,205	-	114,450	7,630,963	2,798,825	-	4,946,588
499,487	-	2,365,071	970,195	2,019,046	-	Cr1,046,850	-	-	3,734,553	2,518,732	-	1,214,821
1,142,587	-	2,416,226	7,375,790	1,848,244	-	5,527,546	-	-	10,934,603	2,990,831	-	7,943,772
1,643,755	-	1,765,987	6,184,809	2,785,963	-	3,398,846	-	-	9,594,551	4,429,718	-	5,164,833
2,659,583	-	Cr 631,415	1,244,372	4,153,489	-	Cr 2,909,117	-	-	3,272,540	6,813,073	-	Cr 3,540,533
5,327,227	-	Cr1,642,970	904,405	4,668,049	-	Cr 3,763,644	-	Cr 53,918	4,642,580	9,995,276	-	Cr 5,406,814
3,089,445	-	1,063,290	414,875	6,687,422	-	Cr 6,272,547	-	67,525	4,500,087	9,776,868	-	Cr 5,309,257
390,189	317,060	2,468,514	178,302	7,166,001	Cr 8,491	Cr 6,996,190	-	284,981	3,049,075	7,556,190	225,541	Cr 4,527,676
320,748	341,210	6,362,079	253,027	6,244,009	12,595	Cr 5,978,388	-	736,735	6,520,328	6,564,757	328,615	383,691
443,701	292,850	17,097,068	11,134,446	1,758,151	171,193	9,547,488	-	3,765,084	25,203,040	2,201,852	121,657	26,644,555
291,451	890,061	15,762,378	19,218,918	6,118,393	Cr 1,101	13,099,425	52,500	2,586,362	33,629,045	6,409,843	891,161	25,914,303
602,083	82,669	16,196,987	1,449,602	2,299,981	-	Cr 830,379	-	5,122,526	13,228,816	2,902,063	82,669	15,344,609
272,227	2,485,713	14,943,644	9,243,507	1,506,381	-	7,737,126	-	567,082	26,378,009	1,778,608	2,485,713	22,680,770
256,199	559,549	13,698,811	8,136,955	2,499,426	-	5,637,529	-	370,233	22,281,882	2,755,625	559,549	19,326,340
178,240	292,719	8,395,085	21,626,969	5,760,268	-	15,866,701	1,320 Cr	229,771	30,263,243	5,938,508	294,039	24,325,446
299,512	408,610	7,708,243	15,514,312	4,458,043	Cr 17,799	11,038,465	-	934,846	22,995,831	4,757,561	426,409	18,746,708
172,442	4,488	5,935,975	11,296,519	4,463,861	-	6,820,658	22,371	1,126,075	16,303,720	4,636,203	4,488	13,789,004
164,349	352,278	4,339,352	4,926,094(1)	2,525,604	Cr 23,293	2,377,197	14	1,144,023	8,638,073	2,689,962	375,571	6,716,563
211,845	D 41,949	4,418,746	5,395,010	913,392	Cr 16,330	4,465,287	1,280	-	9,985,023	1,125,327	D 25,618	8,885,314
73,746	394,618	3,677,817	11,375,084	277,783	-	11,097,301	58,606	-	15,583,013	351,551	397,736(2)	14,833,724
186,197	1,614,741	Cr1,450,217	88,965	290,317	Cr 3,961	Cr 205,314	-	-	439,686	476,514	1,618,702	Cr1,655,531
-	-	2,704,147	481,073	-	-	481,073	48,881	-	3,234,121	-	-	3,234,121
-	-	1,297,457	2,315,016(3)	-	-	2,315,016	29,466 (3)	-	3,641,939	-	-	3,641,939
								17,191,343	337,832,740	104,874,738	7,886,234	242,283,107

ipment - New Lines: 1922 $44,465

justment for General Expenditures of $3,120 Cr.

for New Lines 1917, not shown on statement. Total amounts were as follows:

Road	$300,194,006
Equipment	45,912,885
General Expenditures	222,087
Total	$346,328,978

4. Net expenditures only for 1917 and 1918.

[fol. 249]

Group Exhibit 26.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6935

Missouri Pacific Railroad Company

Typical Cycle of Financing Improvements
Through Sale of $25,000,000 First and Refunding Series "G" Bonds

			Investment in Road and Equipment		Loans and Bills Payable Advances from Affiliated Companies		First & Refunding Mortgage Bonds Outstanding
			As of Date Shown	Increase from March 31, 1927	Item	Total Outstanding	
In March 1927, $95,000,000 Series F Bonds had been sold, and a new cycle of financing improvements begun. After this financing Investment in Road and Equipment, and First and Refunding Bonds outstanding, were as shown on March 31, 1927			$461,813,819	$	$	$	$112,840,500 (1)
Increase in Road and Equipment, short term loans, and ultimate financing through sale of $25,000,000 Series "G" Bonds—							
1927	August	Loan from Guaranty Trust Co.	476,653,252	14,839,433	5,000,000	5,000,000	
	September	do	479,093,616	17,279,797	2,000,000	7,000,000	
	December	Total for Year	481,040,723	19,226,904		7,000,000	
1928	March	Loan from I.-G. N. R. R. Co.	485,339,997	23,526,178	750,000	7,750,000	
	April	Loan from Guaranty Trust Co., New York	486,552,007	24,738,188	1,000,000	8,750,000	
	May	Loan from M. P. Hospital Ass'n	487,706,755	25,892,936	150,000	8,900,000	
	August	Loans from National Bank of Commerce, St. Louis	491,536,359	29,723,040	1,000,000		
		First National Bank, St. Louis			750,000		
		Boatmen's National Bank, St. Louis			250,000		
		I.-G. N. R. R. Co.			300,000		
		N. O. T. & M. Ry. Co.			200,000	11,400,000	
	September	Loan from N. O. T. & M. Repaid	492,970,287	31,156,448	Dr 200,000		
		Loan from I.-G. N. Repaid in part			Dr 100,000	11,100,000	
	October	Loan from M. P. Hospital Assn. Repaid in part	494,366,548	32,552,729	Dr 50,000	11,050,000	
	November	$25,000,000 Series "G" Bonds sold	495,768,412	33,954,593			25,000,000
		Loans repaid—Guaranty Trust Co.			Dr 8,000,000		
		—I.-G. N. R. R. Co.			Dr 950,000		
		M. P. Hospital Ass'n			Dr 100,000		
		National Bank of Commerce			Dr 1,000,000		
		First National Bank			Dr 750,000		
		Boatmen's National Bank			Dr 250,000		
		Totals after Financing	$495,768,412	$33,954,593		.....	$137,840,500

Note (1) Excludes bonds called for redemption, retirement of which was provided for through the sale of Series F Bonds. The bonds were retired between April and August, 1927.

Dr.—Debit.

Source: Company Records
January 6, 1945.

[fol. 250]

Group Exhibit 27.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6935

Missouri Pacific Railroad Company

Typical Cycle of Financing Improvements
Through Sale of $25,000,000 First and Refunding Series H Bonds

	Investment in Road and Equipment		Loans and Bills Payable		First and Refunding Mortgage Bonds Outstanding
	As of Date Shown	Increase from November 30, 1928	Item	Total Outstanding	
In November 1928, $25,000,000 Series G Bonds had been sold and a new cycle of financing improvements begun. After this financing, Investment in Road and Equipment, and First and Refunding Bonds Outstanding were shown on November 30, 1928	$495,768,412	.....			$137,840,500
Increase in Road and Equipment short term loans, and ultimate financing through sale of $25,000,000 Series H Bonds:					
1928—December 31	496,844,341	$ 1,075,929			137,840,500
1929—December 31	525,812,525	30,044,113			137,840,500
1930—January —Loan from Texas and Pacific Ry.	527,802,921	32,034,509	$ 700,000	$ 700,000	137,840,500
February—Loan from Guaranty Trust Co.	528,663,299	32,894,887	4,500,000	5,200,000	137,840,500
March —Loan from Guaranty Trust Co.	530,866,239	35,097,827	2,000,000		
Texas and Pacific Loan, repaid			Dr. 700,000	6,500,000	
April 7 —Loans from First National Bank St. Louis			1,000,000		
Boatmen's National Bank "			300,000		
Mississippi Valley Trust Co. "			200,000		
15 —$25,000,000 Series H Bonds sold					25,000,000
Loans repaid—Guaranty Trust Co.			Dr. 6,500,000		
First National Bank			Dr. 1,000,000		
Boatmen's National Bank			Dr. 300,000		
Mississippi Valley Trust Co.			Dr. 200,000		
30 —Totals, after financing	532,734,086	36,965,674		.....	162,840,500

Dr.—Debit

Source: Company Records

January 6, 1945.

[fol. 251]

Group Exhibit 28.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6935

Missouri Pacific Railroad Company

Typical Cycle of Financing Improvements
Through Sale of $61,200,000 First and Refunding Series I Bonds

			Investment in Road and Equipment — As of Date Shown	Investment in Road and Equipment — Increase from April 30, 1930	Loans and Bills Payable — Item	Loans and Bills Payable — Total Outstanding	First and Refunding Mortgage Bonds Outstanding
In April 1930, $25,000,000 Series H Bonds had been sold, and a new cycle of financing improvements begun. After this financing, Investment in Road and Equipment and First and Refunding Bonds outstanding, were as shown on April 30, 1930			$533,734,086				$162,840,500
Increase in Road and Equipment, short term loans, and ultimate financing through sale of $61,200,000 Series I Bonds:							
1930	August	Loan from J. P. Morgan & Co.	549,775,423	$17,041,337	$ 1,000,000	$ 1,000,000	
	September	do	550,770,550	18,036,464	1,800,000	2,800,000	
	October	do	551,621,217	18,887,131	3,300,000	6,100,000	
	November	do	552,720,829	19,986,743	2,000,000	8,100,000	
	December	do	552,835,936	20,101,850	1,900,000	10,000,000	
1931	January	do	553,523,719	20,789,633	1,200,000	11,200,000	
	February	Series I Bonds Sold—					
		To Refund St. L. I. M. & S. Bonds					42,874,000
		For Capitalizable Expenditures					18,326,000
			$554,079,881	$21,345,795			$ 61,200,000
	March	Loans repaid			Dr. $11,200,000	.....	
		Totals after Financing					$234,040,500

Dr.—Debit

Source: Company Records

January 6, 1945.

[fol. 252]

Group Exhibit 29.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6935

Gulf Coast Lines

Typical Cycle of Financing Improvements
Through Sale of $5,900,000 NOT&M First Mortgage Series D Bonds

			Investment in Road and Equipment	Loans and Bills Payable Advances from MP R. R. Co. Item	Loans and Bills Payable Advances from MP R. R. Co. Total Outstanding	First and Income Mortgage Bonds Outstanding
In August 1936, $4,600,000 First Mortgage Series C Bonds had been sold, and a new cycle of financing improvements begun. After this financing Investment in Road and Equipment, and First and Income Bonds Outstanding, were as shown on August 31, 1936			$61,373,433			$37,070,000
Increase in Road and Equipment, short term loans, and ultimate financing through sale of $5,900,000 Series D Bonds:						
1937	June	Loans from Mercantile Trust Co., St. Louis		$ 981,441		
		do		692,583	$1,574,024	
	August	Advances from Missouri Pacific R. R. Co.		335,000	1,909,024	
	September	Advances from Missouri Pacific R. R. Co.		1,465,000		
		Loan from Mercantile Trust Co., repaid		Dr. 1,574,024	1,800,000	
	October	Advance from Missouri Pacific R. R. Co.		155,000	1,955,000	
	November	do		650,000	2,605,000	
	December	do		425,000		
		do		100,000		
		Loan from Mercantile Trust Co., St. Louis		1,403,739	4,533,739	
1938	February	$5,900,000 Series D Bonds sold:				5,900,000
		Loan from Mercantile Trust Co., repaid		Dr. 1,403,739		
		Advances from Missouri Pacific R. R. Co., repaid		Dr. 2,130,000		
		Totals, after financing	$63,057,177		.....	42,970,000
		Increase in Road and Equipment	6,683,739			

Dr.—Debit

Source: Company Records

January 6, 1945.

[fol 253]

Group Exhibit 30.

WHW:WDS
2-25-29

Gulf Coast Lines

Status of Authorities for Expenditure to February 23, 1929

	Total	Road & Equipment	Operation	Other Accounts
Outstanding Authorities to December 31, 1928 as covered by A. F. E. Progress Report	$7,527,598.00	$6,036,131.00	$983,688.00	$507,779.00
Expended to December 31, 1928	6,100,113.04	5,293,982.85	462,622.48	343,507.71
Leaving to be Expended	1,427,484.96	742,148.15	521,065.52	164,271.29
Since December 31, 1928, the Executive Committee has approved A. F. E.'s as follows:				
January—1929	$ 201,029.00	$ 175,026.00		
February	240,667.00	236,587.00		
Items prior to December 31, 1928, for which A. F. E.'s not issued	801,950.00	457,750.00		
Total	$1,243,646.00	$ 869,463.00		
Grand Total to Be Expended	$2,671,130.96	$1,611,611.15		
Amount included in Financial Forecast to cover Road and Equipment, detail of which is as follows:				
1929—February		$ 224,000.00		
March		350,915.00		
April		198,645.00		
May		200,200.00		
June		176,360.00		
July		152,450.00		
August		102,970.00		
September		109,420.00		
October		111,270.00		
November		63,000.00		
December		63,000.00		
1930—January		63,000.00		
Total		$1,815,230.00		

[fol. 254]

Group Exhibit 31.

Detail of Estimated Advances in 1929 by Missouri Pacific to Gulf Coast Lines

Cash Available:	
Cash balance, January 31, 1929	$ 703,699
Net Income after interest, 12 months ended January 31, 1930	1,055,425
Depreciation	480,000
Total Cash Available	$2,239,124
Cash Requirements:	
Road and Equipment, 12 months ended January 31, 1930	$1,815,230
Equipment Trust principal	228,000
Dividend	1,038,302
Working fund	1,500,000
	$4,581,532
Net Cash Required	$2,342,409
Less 80% of issuable bonds in amount of $1,528,700, on which N. O. T. & M. could borrow	$1,222,960
Advance required from Missouri Pacific during 1929	$1,119,449

Group Exhibit 32.

MISSOURI PACIFIC SYSTEM
Proposed Reorganization as of January 1, 1936
Finance Docket No. 9918

Analysis of
Missouri Pacific Advances to N. O. T. & M.,
Additions and Betterments to Gulf Coast Lines
and Cash Requirements of N. O. T. & M.
January 1, 1928 - March 31, 1933

Date	Missouri Pacific Advances to N. O. T. & M.		Gulf Coast Lines Increase in Investment (Note A)		Cash Payments Made Immediately After Advances Received								
					First Mortgage Bonds Interest		Equipment Trust Obligations			Income Bonds Interest	Dividends	First Mortgage Sinking Fund Payments	Advances Repaid Credit
	Made on Date Shown	Cumulative	Since Last Advance	Cumulative	Series	Amount	Series	Interest	Principal				
November 30, 1928	$ 300,000	$ 300,000	$1,776,927 (B)	$1,776,927			B	$ 14,625	$ 50,000		$259,576		
December 31, 1928	100,000	400,000	174,578	1,951,505								$ 93,115	
January 31, 1929	150,000	550,000	133,769	2,085,274	C D	$115,000 132,750							
February 28, 1929	250,000	800,000	370,332	2,455,606							259,576		
March 30, 1929	500,000	1,300,000	280,899	2,736,505	A B	433,675 342,250	C	19,530	62,000	$ 75,250			
July 31, 1929	125,000	1,425,000	1,378,126	4,114,631	C D	115,000 132,750							
August 31, 1929	275,000	1,700,000	462,264	4,576,895							259,576		
September 30, 1929	850,000	2,550,000	406,891	4,983,786	A B	433,675 343,325	C	18,135		74,175			
October 31, 1929	150,000	2,700,000	222,140	5,205,926			A	31,900	116,000				
November 29, 1929	310,000	3,010,000	167,969	5,373,895			B	13,500	50,000		259,576		
January 30, 1930	100,000	3,110,000	518,074	5,891,969	C D	115,000 132,750							
February 28, 1930	260,000	3,370,000	268,294	6,160,263							259,576		
March 31, 1930	430,000	3,800,000	133,782	6,294,045	A B	433,675 348,337	C	18,135	62,000	69,163			
May 31, 1930	275,000	4,075,000	361,583	6,655,628			B	12,375			259,576		
June 4, 1930	500,000 Cr.	3,575,000											$ 500,000
September 29, 1930	550,000	4,125,000	476,034	7,131,662	A B	433,675 348,663	C	16,740		68,837			
November 29, 1930	300,000	4,425,000	154,621	7,286,283			B	12,375	50,000		259,576		
December 31, 1930	50,000	4,475,000	101,716	7,387,999								93,115	
January 31, 1931	247,750	4,722,750	111,594	7,499,593	C D	115,000 132,750							
February 25, 1931	75,000	4,797,750	138,303	7,637,896							259,576		
March 31, 1931	925,000	5,722,750	121,355	7,759,251	A B	433,675 348,687	C	14,740	62,000	68,813			
May 27, 1931	200,000	5,922,750	128,881	7,888,132			B	11,250			259,576		
August 27, 1931	7,612 Cr.	5,915,138											7,612
August 29, 1931	250,000	6,165,138	154,446 D	7,733,686							259,576		
September 30, 1931	850,000	7,015,138	354,933 D	7,378,753	A B	433,675 348,900	C	15,345		68,600			
October 19, 1931	23,594 Cr.	6,991,544											23,594
October 31, 1931	125,000	7,116,544	10,580	7,389,333			A	26,100	116,000				
November 27, 1931	300,000	7,416,544	28,260	7,417,593			B	11,250	50,000		259,576		
December 28, 1931	40,002 Cr.	7,376,541											40,002
December 30, 1931	75,000	7,451,541	85,223	7,502,816								93,115	
January 28, 1932	200,000	7,651,541	50,741	7,553,557	C D	115,000 132,750							

MISSOURI PACIFIC SYSTEM
Proposed Reorganization as of January 1, 1936
Finance Docket No. 9918

Analysis of
Missouri Pacific Advances to M. O. T. & M.,
Additions and Betterments to Gulf Coast Lines
and Cash Requirements of M. O. T. & M.
January 1, 1928 - March 31, 1933

Group Exhibit 32.
Witness_____

ast Lines n Investment e A)		Cash Payments Made Immediately After Advances Received												
		First Mortgage Bonds Interest		Equipment Trust Obligations			Income Bonds Interest	Dividends	First Mortgage Sinking Fund Payments	Advances Repaid Credit	Total		Date of Payment	Remarks
	Cumulative	Series	Amount	Series	Interest	Principal								
	$1,776,927			B	$ 14,625	$ 50,000		$259,576			$ 324,201		December 1, 1928	
	1,951,505								$ 93,115		93,115		December 31, 1928	Withdrawn account Betterments Jan. 14, 1929
	2,085,274	C D	$115,000 132,750								247,750		February 1, 1929	
	2,455,606							259,576			259,576		March 1, 1929	
	2,736,505	A B	433,675 342,250	C	19,530	62,000	$ 75,250				932,705		April 1, 1929	
	4,114,631	C D	115,000 132,750								247,750		August 1, 1929	
	4,576,895							259,576			259,576		September 3, 1929	
	4,983,786	A B	433,675 343,325	C	18,135		74,175				869,310		October 1, 1929	
	5,205,926			A	31,900	116,000					147,900		November 1, 1929	
	5,373,895			B	13,500	50,000		259,576			323,076		December 1, 1929	
	5,891,969	C D	115,000 132,750								247,750		February 1, 1930	
	6,160,263							259,576			259,576		March 1, 1930	
	6,294,045	A B	433,675 348,337	C	18,135	62,000	69,163				931,310		April 1, 1930	
	6,655,628			B	12,375			259,576			271,951		June 1, 1930	
										$ 500,000	Cr. 500,000		June 4, 1930	
	7,131,662	A B	433,675 348,663	C	16,740		68,837				867,915		October 1, 1930	
	7,286,283			B	12,375	50,000		259,576			321,951		December 1, 1930	
	7,387,999								93,115		93,115		December 31, 1930	Withdrawn account Betterments Feb. 2, 1931
	7,499,593	C D	115,000 132,750								247,750		February 1, 1931	
	7,637,896							259,576			259,576		February 28, 1931	
	7,759,251	A B	433,675 348,687	C	16,740	62,000	68,813				929,915		April 1, 1931	
	7,888,132			B	11,250			259,576			270,826		June 1, 1931	
										7,612	Cr. 7,612		August 27, 1931	
	7,733,686							259,576			259,576		August 31, 1931	
	7,378,753	A B	433,675 348,900	C	15,345		68,600				866,520		October 1, 1931	
										23,594	Cr. 23,594		October 19, 1931	
	7,389,333			A	28,100	116,000					142,100		November 1, 1931	
	7,417,593			B	11,250	50,000		259,576			320,826		11/30/31 - 12/1/31	
										40,002	Cr. 40,002		December 28, 1931	
	7,502,816								93,115		93,115		December 31, 1931	Withdrawn account Betterments Feb. 24, 1932
	7,553,557	C D	115,000 132,750								247,750		February 1, 1932	
										460,875	Cr. 460,875		February 27, 1932	
	7,701,768	A B	433,675 349,130	C	15,345	62,000	68,350				928,520		April 1, 1932	

December 30, 1931	79,000	7,651,541	50,741	7,553,557								93,115	
January 28, 1932	200,000	7,651,541	50,741	7,553,557	C D	115,000 132,750							
February 27, 1932	440,875 Cr.	7,190,666											440,875
April 1, 1932	925,000	8,115,666	148,211	7,701,768	A B	433,675 349,150	C	15,345	62,000	68,350			
April 20, 1932	100,000	8,215,666	666,323 D	7,035,445			A	23,200					
August 1, 1932	60,000 Cr.	8,155,666											60,000
August 5, 1932	60,000	8,215,666											
August 26, 1932	56,828 Cr.	8,158,838											56,828
October 1, 1932	800,000	8,958,838	134,481 D	6,900,964	A B	433,675 349,788	C	13,950		67,712			
October 31, 1932	1,261,010	10,219,848	42,402	6,943,366									
November 28, 1932	35,000	10,254,848	22,323	6,965,688			E	10,125	50,000				
December 30, 1932	79,000	10,333,848	13,588	6,979,276								93,115	
January 3, 1933	79,000	10,254,848											79,000
February 1, 1933	210,000	10,464,848	181,416	7,160,692	C D	115,000 132,750							
March 31, 1933			96,158 D	7,064,534									
Plus Special Advance for Miscellaneous Physical Property March, 1929	109,179												
March, 1921 Repayment, Credit	8,800	100,379											
Total due March 31, 1933		10,565,227		7,064,534									

Note A - - Investment includes Road and Equipment, Improvements on Leased Railway Property, Miscellaneous Physical Property, Deposits in Lieu of Mortgaged Property Sold, Investment in Stocks and Bonds and Advances, less in

Note B - - Increase in Investments, January 1, 1928 to November 30, 1928 $2,374,585
Less amount capitalized through the issue of Series D First Mortgage Bonds 727,658
$1,646,927

Add Series D Bonds authorized to be issued in 1928, but not sold at that time and in treasury during period covered 130,000
$1,776,927

Note - - - Increase in Investment figures are as of last day of month closest to date of advance.

D - Decrease.
Cr. - Credit.

July 9, 1937.

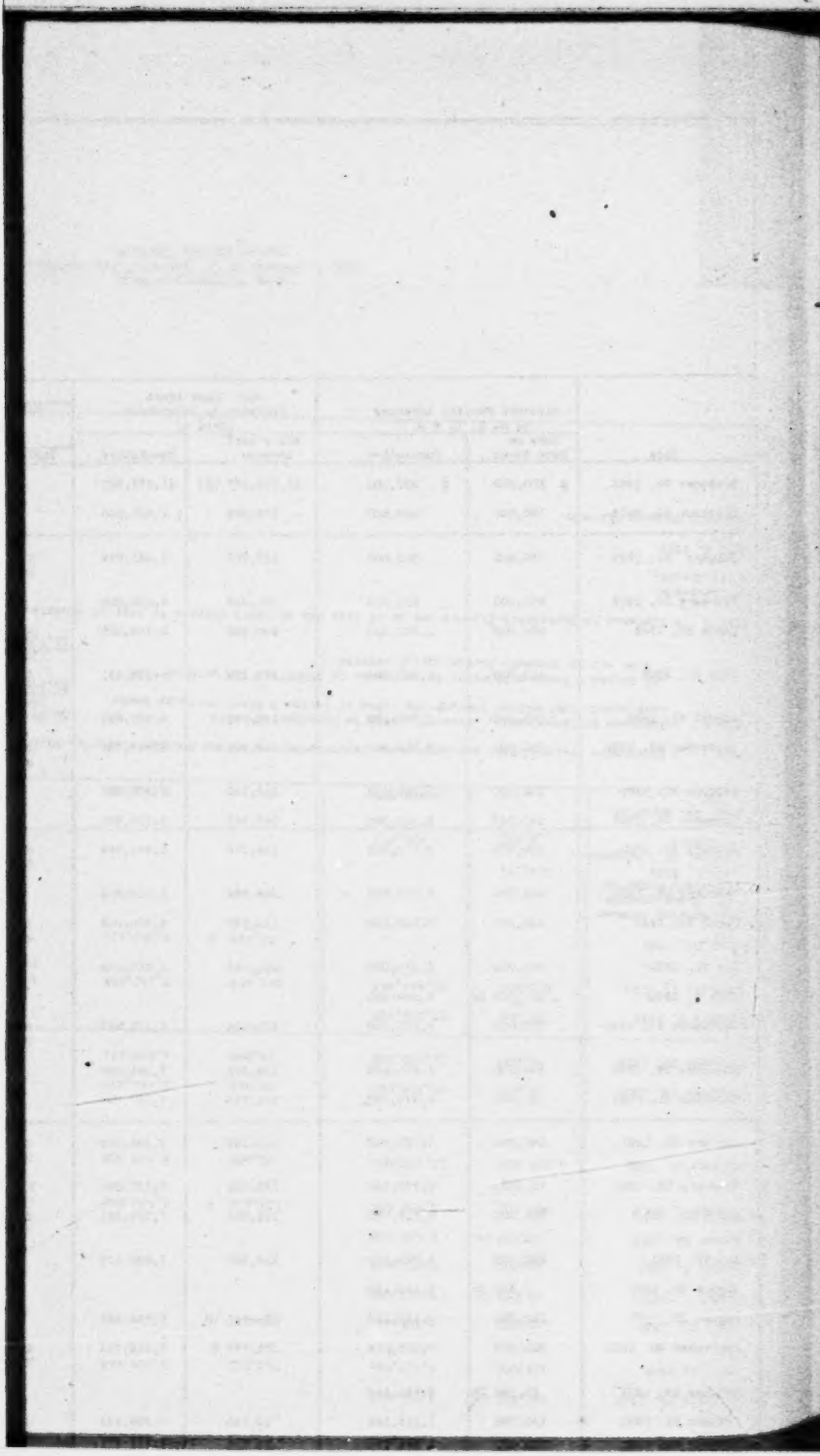
Source - Company Records.

									93,115			93,115	December 31, 1931	Withdrawn account Betterments Feb. 24, 1932
1	7,553,557	C D	115,000 132,750									247,750	February 1, 1932	
										460,875	Cr.	460,875	February 27, 1932	
2b	7,901,768	A B	433,675 349,180	C	15,345	62,000	68,350					928,530	April 1, 1932	
3 D	7,035,445			A	23,200							23,200	May 1, 1932	
										80,000	Cr.	80,000	August 1, 1932	
												80,000	August 5, 1932	
										56,828	Cr.	56,828	August 26, 1932	
4 D	6,900,964	A B	433,675 349,788	C	13,950		67,712					865,125	October 1, 1932	
5	8,943,366											1,261,010		Payment of bills rendered against Gulf Coast Lines by I.-G. N. for operating expenses, rentals, etc.
6	6,965,688			B	10,125	50,000						60,125	December 1, 1932	
7	6,979,276								93,115			93,115	December 31, 1932	Withdrawn account Betterments Jan. 3, 1933
										79,000	Cr.	79,000	January 3, 1933	
8	7,160,692	C D	115,000 132,750									247,750	February 1, 1933	
9 D	7,064,534													
	7,064,534													

...ased Railway Property, Miscellaneous Physical Property, Deposits in Lieu of Mortgaged Property Sold, Investment in Stocks and Bonds and Advances, less inter-company eliminations.

...1928	$2,374,565
...4 Mortgage Bonds	737,638
	$1,636,927
...t sold at that	130,000
	$1,776,927

... closest to date of advance.



[fol. 256] Group Exhibit 33.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 8535

Gulf Coast Lines

Analysis of Increase in Investments
January 1, 1938 — November 30, 1941

Increase in Road and Equipment Investment, January 1, 1938	$67,497,946		
Investment, November 30, 1941	74,934,836	$7,436,890	(1)
Increase in other investments		578,561	(2)
Total Increase in Investments		$8,015,451	
Less amount required to support N. O. T. & M. First Mortgage Bonds, Series D, sold in February, 1938		797,452	
Add Series D Bonds previously authorized and held in Treasury		120,000	
Net increase in investment and Series D Bonds available, financed by advances from Missouri Pacific Railroad Company		$7,417,583	

Notes: 1. Major Additions and Betterments financed by advances from Missouri Pacific Railroad Company, including projects costing $5,000 or more each (for analysis see separate exhibit) $6,799,855
Minor items of less than $5,000 each, retirements, adjustments, etc. 1,637,035 $7,436,890

2. Advances to bridge and terminal companies—

Houston Belt & Terminal Ry. Co.	$190,913		
Texas City Terminal Ry. Co.	156,897		
Brownsville & Matamoros Bridge Co.	32,250	$380,060	
Investment in Miscellaneous Physical Property—			
Land for industrial purposes at Corpus Christi, Texas	$ 99,224		
Garage at Brownsville, Tex.	26,491		
Land at McAllen, Texas—8.61 acres	21,526		
Land at Weslaco, Texas—38.97 "	11,466	158,717	
Bonds acquired—			
Brownsville & Matamoros Bridge Co.	$ 29,500		
I-G. N. Adjustment Mortgage Bonds	47,825	77,325	
Miscellaneous minor retirements, each less than $5,000		Cr. 43,241	$573,561

Source: Company Records
January 15, 1945

[fol. 257] **Group Exhibit 34.**

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6935

Gulf Coast Lines

Major Additions and Betterments Financed by Advances from Missouri Pacific Railroad Company
January 1, 1928 to November 30, 1931

Summary

Extensions of line or new spurs:			
Ed Couch to Weslaco		$362,628	
San Benito Jct. to Abney		297,790	
Cabell Branch (Sugar Land Ry.)		177,806	
Victoria—Gulf Gravel Co. Spur		110,110	
San Fernando to La Leona		94,033	
Baytown to Goose Creek		80,921	
La Paloma to Lantander		61,974	
Brundage (Tex.) Spur		55,311	
Santa Monico Branch	$33,251		
Raymondville—Monte Christa	6,379	38,630	$1,379,3
New industry tracks, vegetable sheds, warehouses, real estate and other station facilities			973,91
New ballast			739,29
New tie plates, rail anchors and other track material			352,21
New shop facilities			402,67
Strengthening, renewing and replacing bridges			350,09
New rail			264,37
Automatic block signals			305,37
New equipment			226,46
Extending passing tracks and yard tracks			192,56
Raising grade and other river protection			167,60
New interlockers			168,67
Filling bridges and bank widening			148,99
Improvements to existing equipment			42,67
Assessments for public improvements			67,71
Work equipment and track tools			36,45
Crossing protection and grade crossing elimination			26,51
New engine house facilities			25,59
Change in main line location			.....
Water stations			14,34
		Total	$5,799,65

Note: Includes only individual projects costing $5,000 or more each.

Source: Company Records.

January 15, 1945.

[fol. 258] Group Exhibit 35.

In the
District Court of the United States
Eastern Division, Eastern Judicial District
of Missouri

In the Matter of

Missouri Pacific Railroad Company, Debtor } In Proceedings For the Reorganization of a Railroad, No. 6935

Gulf Coast Lines

Major Additions and Betterments Financed by Advances from Missouri Pacific Railroad Company

January 1, 1928 to November 30, 1931

Extensions of Line or New Spurs	
Ed Couch to Weslaco	
The chief purpose of this extension is to more adequately serve the irrigated section of the Rio Grande Valley between Ed Couch and Weslaco and to effect saving in operation by through lines from Weslaco and Ed Couch thence via Hargill and Raymondville to Northern markets	$ 362,628
San Benito Jctn. to Abney	
This line will serve an irrigated territory not now reached by rail transportation. Principal crops produced being citrus fruits, vegetables, cotton and other staples. Estimated increase in revenue first year $66,277, fifth year $153,000	297,790
Cabell Branch (Sugar Land Ry.)	
This extension will serve an area of about 25,000 acres of fertile Brazos River bottom land and it is estimated that increase in revenue in the fifth year will approximate $254,000	177,806

Victoria—Gulf Gravel Co. Spur

The purpose of this spur is to serve an area containing an estimated 15 million cubic yards of sand and gravel. Increase in revenue is estimated at $253,125 yearly from this pit location and development of which will also insure of an adequate supply of first class gravel for Railroad use..... 110,110

San Fernando to La Leona

This line will serve an irrigated territory not now reached by rail transportation. Principal crops in this area are citrus fruits, vegetables, cotton and other staples. Increased revenue for first year estimated at $24,514 and for fifth year $56,700..... 94,033

[fol. 259] Baytown to Goose Creek

Expenditure for completion of electric line from Houston to Goose Creek as originally projected 80,921

La Paloma to Santander

Line will serve an irrigated territory not now reached by rail transportation. Principal crops are vegetables, citrus fruits, cotton and other staples, estimated increase in revenue first year $23,956 and fifth year $32,959.. 61,974

Brundage (Tex.) Spur

Spur will serve an area of about 16,500 acres of newly developed agricultural land not served at the present time by Railroad transportation. Estimated increase in revenue first year $42,500, fifth year $130,300..... 55,311

Santa Monica Branch

This extension will serve a newly developed section of the Rio Grande Valley not now served by rail transportation (Line between Raymondville and Santa Monica)..... 32,251

Raymondville-Monte Christo New line will shorten rail haul between Edinburg and Raymondville by 29 miles and will also shorten the haul between points on the Hidalgo Branch west of San Juan. The country traversed is devoted to agriculture and citrus fruits	6,379
Total	$1,279,203
New Industry Tracks, Vegetable Sheds, Warehouses, Real Estate, and Other Station Facilities	
Rio Grande Area, Corpus Christi Area and Winter Garden Area. The facilities constructed in the above areas are necessary to serve rapidly expanding fruit and vegetable producing areas with large quantities of additional lands being placed in cultivation resulting in additional shippers locating on these lines and additional loading points being established to serve newly developed areas. Due to the entrance of the Southern Pacific into the Rio Grande Valley and rapidly developing truck competition this territory has become highly competitive necessitating furnishing adequate facilities to hold the traffic	583,066
Refugio Area—Expenditures in this area are due to the opening and development of a newly discovered oil field of quite large proportions, which necessitated construction of new trackage to take care of shipments of oil moving out in tank cars as well as inbound movements of oil field equipment	43,271
[fol. 260] Beaumont—Construction of office over freight depot and 2,000 ft. extension to switching lead. Office constructed over freight depot to release necessary warehouse space, track to provide public loading facilities with estimated increase in revenue of $90,000	18,503

Construction of 1.31 miles of concrete highway on alternate route to prevent county highway from crossing over the new Harlingen Yards, which would have resulted in excessive increase in operating costs..... 33,000

Relocate St. LB&M Ry. Angleton depot to point of crossing with H&BV Ry. for joint use, thereby eliminating one depot and station force with salary saving of $5,250 yearly..... 11,696

New stock pens and extension of stock loading tracks at two locations due to State Highway #128 being constructed parallel with railroad and making it necessary to construct new facilities on opposite side of highway..... 21,267
Greta—12,003 Inari—9,264

Vegetable sheds and tracks for potato land development in Sugar Land Area, estimated increase in revenue $42,850 yearly.
Sugarland—18,722 23,730
Smada — 5,008

New track to serve newly developed vegetable and fruit area on Houston North Shore Railway, estimated increase in revenue of $5,000 annually 5,027

Corpus Christi—Procure necessary right-of-way and construct 8,752 ft. connecting track between S. A. U. & G. Ry. main track and Texas-Mexican Ry. and 3,703 ft. of siding and wye tracks. Trackage will provide connecting track superior to present track with space available along same for future industrial development, resulting in increased revenue and operating economies. Present route is through congested area of Corpus Christi..... 111,967

Construct 2.7 miles of main spur track on Ed Couch-Hargill Branch to serve Engleman Garden development. Track will serve 11,000 acres of land being put into citrus fruit and is necessary to adequately serve the area, meet competition of other lines and keep pace with development in the Rio Grande Valley. It is estimated that the annual gross revenue accruing to the Railroad Company will be increased $42,000 per year at the end of the second year and $695,000 per year at the end of the fifth year	24,593
Track to serve gravel pit from which company ballast will be procured. Victoria.....	5,234
Set-out track 2,280 ft. long to prevent blocking of yards due to heavy movement of road construction material moving from points in the vicinity. Bloomington	8,336
[fol. 261] Stock pen track necessary to take care of increased live stock loading, with estimated increase in revenue of $1,420 per annum. Maudlow, Texas	5,918
New stock pens and water well. Pens in area where Government inspection of cattle necessary and this project will enable meeting competition of another line that is equipped with inspection pens	5,324
Construction of 1,800 ft. storage track for South Coast Sugar Refining Co., increase in revenue estimated at $4,000 annually. Oaklawn	7,426
Construction of two spur tracks to serve newly opened rock asphalt mines, with an estimated annual revenue increase of $100,000.	
White, Texas 10,207	70,560
Dabney, " 60,353	
Total .....$	978,918

New Ballast

Application of ballast results in decreased maintenance costs and directly increases train speeds and operating efficiency of the railroad. $ 739,297

New Tie Plates, Rail Anchors and Other Track Material

Application of tie plates to ties increases the life of ties by reducing mechanical wear on ties, thereby effecting savings in renewal costs, in addition track conditions generally improve resulting in reduced cost of track maintenance in general.

Use of rail anchors materially reduces buckling and slipping of rail, thereby improving track conditions in general and also makes for increased safety of operation. Maintenance and renewal of rail is also reduced through minimizing battered rail ends..... 352,216

New Shop Facilities

Construction of car barn and tracks at Goose Creek for housing and caring for equipment of Houston North Shore Ry. electric line..... 10,155

Construction of mechanical facilities and tracks for equipment of the Sugar Land Ry. at Sugarland, Texas 9,593

Electrification of shops at DeQuincy and connecting to city power lines. Will effect a saving of approximately $15,600 annually by elimination of present power plant..... 47,836

[fol. 262] Purchase new electric machinery for DeQuincy shops. It is estimated that increased efficiency and man hour savings will produce an operating saving of $7,624 annually..... 30,458

Laying 23,900 square feet of concrete driveways in Kingsville shop grounds over which shop tractors and cranes will operate handling materials. There will be an operating saving through faster handling of heavy items of materials and supplies between storehouse and shops	5,860
Construction of new coach and mill shop and 12,430 ft. of shop tracks at Kingsville. Storage tracks necessary to prevent congestion of freight switching yards with cars awaiting rebuilding. Shops constructed to take care of expansion of work, rebuilding freight and passenger cars	206,558
Purchase new shop machinery for Kingsville shops. Increased efficiency and man hour savings estimated at $10,000 annually	73,594
Constructing 2,750 ft. of rip tracks, three engine tracks 3,830 ft., four yard tracks 16,210 ft., frame engine house, two engine pits, machine and blacksmith shop and 70,000 gallon elevated water tank and supply lines. Facilities will avoid yard delays to high class perishable freight. Shop facilities to make running repairs to engines tieing up at this point, thus avoiding deadheading engines to Kingsville shops. Harlingen	18,618
Total	$ 402,672

Strengthening, Renewing and Replacing Bridges

Strengthening and renewing bridges is an operating necessity due to normal wear and tear on the structures, in addition heavier equipment has been put in use in recent years necessitating heavier types of structures. Present day costs of structures are higher than structures retired ..... $ 350,089

New Rail

Application of new and heavier rail is necessary to the continued improvement policy of railroad facilities, and to meet the requirements of heavier equipment and increased traffic. New and heavier rail is also necessary for speeded up operations..... 264,376

[fol. 263] **Automatic Block Signals**

Installation of automatic block signals permits safer train speeds, enables trains to make closer meeting points, reduces road overtime of train crews and minimizes operating hazards..$ 305,374

New Equipment

For final cost of steamer "Walker" (Transfer boat) ..... $ 46,135

For reconstructing 120 old worn out box cars into standard equipment..... 180,273

Total ..... $ 226,408

Extending Passing Tracks and Yard Tracks

The construction of new and extension of existing passing tracks covered by these projects will effect a saving in train delays and switch engine hours amounting to $26,465 annually...$ 161,673

Construct 2,400 ft. wye track and 1,800 ft. yard track at Brundage for handling asphalt. Operating saving of $5,990 annually..... 17,307

Construct track scale and scale track for handling asphalt. Will eliminate back haul and effect operating saving of $2,000 annually..... 13,580

Total ..... $ 192,560

Raising Grade and Other River Protection

Various Locations—Raising grade for protection against high water, lessening danger of washouts, train delays and detours	$ 88,078
Krotz Springs, La.—Removing 128,000 cubic yards from west bank of Atchafalaya River and laying 115,000 square feet of mattresses as protection for bridge against sliding and scouring	79,524
Total	$ 167,602

[fol. 264] **New Interlockers**

Interlocking plants speed up train movements by eliminating stops at crossings with other roads, thereby reducing train delays which reflects a direct saving in both fuel and wage costs	$ 168,676

Filling Bridges and Bank Widening

Restoration of and widening embankment for distance of approximately 150 miles, in line with the continued rehabilitation policy and produces a direct saving in maintenance expense through enabling the holding of tracks in better surface and alignment	$ 148,990

Improvements to Existing Equipment

Converting passenger cars into dining and club cars to meet competition	$ 25,572
Steam drums on steamer "Willard V. King" (Transfer boat), increased efficiency	10,726
Convert box cars to work cars for use of rail relay gangs	6,374
Total	$ 42,672

Assessments for Public Improvements		
Assessments against the railroad for paving to comply with City ordinances	$	67,711
Work Equipment and Track Tools		
Purchase weed burner and pneumatic tie tamping machines. Maintenance costs are lessened by reduction in man hours through use of these machines	$	5,377
Portable automatic substation necessary to provide protection to other substations on electric line of Houston North Shore Ry		31,074
Total	$	36,451
[fol. 265] **Crossing Protection & Grade Crossing Elimination**		
Construction of underpasses and overpasses on main highways results in elimination of hazards of crossing accidents and is in line with the policy of elimination of grade crossings over the country as a whole	$	26,512
New Engine House Facilities		
Construct locomotive cleaning plant, operating saving in man hours $2,042 annually. DeQuincy	$	5,298
Construct oil storehouse at DeQuincy. Will permit purchasing and storage of oil in tank car lots effecting saving in material costs of $3,000 annually		18,170
Locomotive inspection pits and 820 ft. engine track at Mission. Will permit inspections and repairs at this point that formerly had to be performed at Harlingen		7,048
Install turntable and tracks at San Benito. Will enable turning locomotives, thus eliminating the backing up of locomotives and train for a distance of nine miles, which was in violation of I. C. C. safety regulations		5,070
Total	$	35,586

Water Stations	
Drill water well at DeQuincy shops. Will effect saving of $1,240 annually in cost of water for shops and locomotives	$ 8,324
Drill water wells due to having inadequate supply of water for vegetable and fruit sheds, Raymondville	6,018
Total	$ 14,342
Grand Total	$5,799,655

[fol. 266]

Group Exhibit 36.

In the District Court of the United States,
Eastern Division, Eastern Judicial
District of Missouri

In the Matter of Missouri Pacific Railroad Company,
Debtor

In Proceedings for the Reorganization of a Railroad,
No. 6935

Gulf Coast Lines

Major Additions and Betterments Financed by
Advances from Missouri Pacific Rail-
road Company
January 1, 1928 to November 30, 1931

Report of Expenditures to Interstate Commerce
Commission

All Additions and Betterments to Gulf Coast Lines during period January 1, 1928-November 30, 1931 were reported to the Interstate Commerce Commission in complete detail as shown in Authorities for Expenditure, copies of which were furnished the Commission, and which were

summarized in Forms A filed in the following finance dockets:

	Financial Docket	Period Covered by Form A	Remarks
1.	7786	January 1, 1928 to March 31, 1929	Application by N. O. T. & M. For authority to issue and pledge $1,955,000 First Mortgage Bonds, Series D.
2.	9102	April 1, 1929 to August 31, 1931	Application by Missouri Pacific R. R. Co. For authority to issue and pledge $35,000,000 First and Refunding Mortgage Bonds, Series I. Form A included for Gulf Coast Lines.
3.	9918	Sept. 1, 1931 to Dec. 31, 1934	Reorganization proceedings of Missouri Pacific Railroad Company and Subsidiaries. Form A for Gulf Coast Lines, included as Exhibits 117 and 118, consequently includes Additions and Betterments made from September 1, 1931 to November 30, 1931.

Source: Company Records

January 15, 1945.

[fol. 267]

Group Exhibit 37.

In the District Court of the United States, Eastern Division, Ea

In the Matter of Missouri Pacific Railroad C

In Proceedings for the Reorganization of a R

Gulf Coast Lines

Gross Additions and Betterment
1916—1931

	Mar 1 to Dec. 31, 1916	1917	1918	1919	1920	1921	1922	1923
New Orleans, Texas & Mexico Ry. Co.	$ 96,822	$ 790,318	$ 39,215	$ 47,483	$ 733,615	$2,457,074	$532,606	$532,572
The Beaumont, Sour Lake & Western Ry. Co.	32,594	99,105	42,031	12,026	79,482	53,227	53,339	53,533
The Orange & Northwestern R. R. Co.	9,264	2,267	16,502	3,805	3,184	13,948	5,407	2,072
The St. Louis, Brownsville & Mexico Ry. Co.	109,301	128,227	32,069	41,686	347,990	261,070	177,154	209,019
New Iberia & Northern R. R. Co.	92,880	89,726	55,556	5,178	112,759	58,426	16,864	76,734
Iberia, St. Mary and Eastern R. R. Co.	6,928	1,620	1,486	3,729	.....	.....	.....	.....
San Benito and Rio Grande Valley R. R. Co.	3,010	1,718	.....	.....	.....	958	7,500	19,346
Houston and Brazos Valley Ry. Co.	.....	.....	.....	.....	.....	.....	.....	.....
San Antonio, Uvalde & Gulf R. R. Co.	.....	.....	.....	.....	.....	.....	.....	.....
Asphalt Belt Ry. Co.	.....	.....	.....	.....	.....	.....	.....	.....
Sugar Land Ry. Co.	.....	.....	.....	.....	.....	.....	.....	.....
Asherton and Gulf Ry. Co.	.....	.....	.....	.....	.....	.....	.....	.....
Rio Grande City Ry. Co.	.....	.....	.....	.....	.....	.....	.....	.....
San Antonio Southern Ry. Co.	.....	.....	.....	.....	.....	.....	.....	.....
Houston, North Shore Ry. Co.	.....	.....	.....	.....	.....	.....	.....	.....
	$350,799	$1,112,981	$186,859	$113,907	$1,277,030	$2,844,703	$792,870	$893,276

Source: Company Records

Cr.—Credit

January 10, 1945

Group Exhibit 37.

Group Exhibit 37.

he United States, Eastern Division, Eastern Judicial District of Missouri

Matter of Missouri Pacific Railroad Company, Debtor

ceedings for the Reorganization of a Railroad, No. 6935

Gulf Coast Lines

Gross Additions and Betterments
1916—1931

1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	Mar. 1, 1916 to Dec. 31, 1931
733,615	$2,457,074	$532,606	$532,572	$ 736,929	$ 422,024	$ 272,104	$ 162,761	$ 378,131	$ 676,755	$ 176,684	$ 122,156	$ 8,177,249
79,482	53,227	53,339	53,533	91,364	12,390	105,916	72,681	66,718	370,878	129,920	43,045	1,318,249
3,184	13,948	5,407	2,072	9,758	9,932	963	10,850	24,578	25,095	12,827	10,891	161,343
347,990	261,070	177,154	209,019	440,415	2,980,877	2,698,771	3,266,302	1,198,681	1,744,064	918,782	497,924	15,052,332
112,759	58,426	16,864	76,734	83,998	20,497	46,205	94,919	121,558	12,236	16,133	Cr. 6,007	897,662
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	13,763
.....	958	7,500	19,346	13,230	615,200	72,870	117,996	377,144	207,330	190,865	16,051	1,643,218
.....	.....	.....	.....	46,973	9,130	4,759	14,657	13,875	20,738	16,724	2,748	129,604
.....	.....	.....	.....	.....	.....	150,075	228,833	179,913	492,130	343,076	235,397	1,629,424
.....	.....	.....	.....	.....	.....	.....	131,202	13,531	96,238	19,326	10,145	270,442
.....	.....	.....	.....	.....	.....	12,169	4,015	15,193	31,715	133,399	50,961	247,452
.....	.....	.....	.....	.....	.....	19,622	Cr. 4,049	12,929	22,027	18,205	7,824	76,558
.....	.....	.....	.....	.....	.....	16,532	34,780	4,200	5,051	1,232	Cr. 854	60,941
.....	.....	.....	.....	.....	.....	.....	14,288	9,154	13,214	17,633	1,258	55,547
.....	.....	.....	.....	.....	.....	.....	1,925,126	267,232	118,200	35,026	13,660	2,359,244
,277,030	$2,844,703	$792,870	$893,276	$1,422,667	$4,070,050	$3,399,986	$6,074,361	$2,682,837	$3,835,671	$2,029,832	$1,005,199	$32,093,028

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri
In the Matter of Missouri Pacific Railroad Company, Debtor
In Proceedings for the Reorganization of a Railroad, No. 6965

Gulf Coast Lines
Condensed Income Account

1916 - 1943

	1943	1942	1941	1940	1939	1938	1937	1936	1935	1934	1933	1932	1931	1930	1929	1928	
Railway Operating Revenues	$45,584,257	$31,515,706	$18,019,662	$14,556,943	$14,990,712	$14,194,460	$15,759,766	$12,242,708	$9,653,509	$9,554,123	$8,218,282	$9,795,326	$13,406,953	$18,519,482	$18,917,440	$18,904,496	$1
Railway Operating Expenses																	
Maint. of Way and Structures	5,670,518	3,757,321	2,542,490	2,352,553	2,296,981	2,338,418	2,774,973	1,915,889	1,596,943	1,532,747	1,527,907	1,320,274	2,150,979	3,269,999	3,289,547	3,436,529	
Maint. of Equipment	5,725,023	3,079,545	2,574,211	2,168,695	2,359,809	2,822,748	2,421,925	2,241,096	1,988,142	1,788,918	1,477,998	1,696,915	2,389,679	3,082,588	2,980,961	2,972,497	
Traffic	825,984	583,495	544,009	530,496	537,752	581,046	865,298	537,902	507,259	498,598	467,471	522,132	621,808	660,284	704,408	615,256	
Transportation	9,891,586	8,010,297	5,480,561	4,725,237	4,634,004	4,673,247	4,947,546	3,909,735	3,495,274	2,989,722	2,646,380	2,857,057	5,996,484	5,180,908	5,549,415	5,617,250	
Miscellaneous Operations	195,992	134,115	44,055	29,576	30,449	33,157	29,486	22,057	19,463	19,419	15,223	22,955	47,017	66,271	62,341	75,594	
General	851,571	722,242	640,211	607,550	592,218	585,728	606,048	570,635	487,857	623,256	530,718	648,229	680,008	922,228	933,175	897,606	
Transp. for Investment-Cr.	-	-	18,028	18,807	21,847	25,251	21,210	11,945	6,680	29,946	40,273	46,415	45,489	180,396	182,410	180,998	
Total Railway operating Exp.	23,936,844	16,277,014	11,582,278	10,400,758	10,519,278	10,588,682	10,712,964	9,128,867	8,084,181	7,400,480	6,585,264	7,008,827	9,981,695	13,061,813	13,475,855	13,480,531	
Net Revenue from Railway Oper.	22,527,395	15,058,772	6,457,585	4,156,085	4,579,736	5,625,789	5,046,802	3,017,442	1,799,328	2,453,674	1,635,098	2,777,499	3,543,541	5,767,574	5,444,605	5,123,944	
Railway Tax Accruals	14,266,618	5,566,238	949,247	887,864	868,295	869,719	897,713	768,448	556,029	529,350	563,822	582,510	732,153	729,954	795,738	863,548	
Uncollectible Railway Revenues	-	-	-	-	-	-	-	-	-	15,905	7,769	11,084	10,921	12,480	18,848	15,020	
Railway Operating Income	8,260,776	11,470,535	5,488,337	3,268,221	3,711,441	2,966,050	4,449,089	2,248,994	1,243,301	1,908,420	1,063,707	2,174,236	2,800,468	5,026,221	4,630,022	4,905,379	
Rent Income	524,838	456,901	399,367	395,928	458,586	404,207	455,828	437,541	400,909	455,859	486,518	512,899	587,180	529,299	999,625	898,562	
Rents Payable	2,732,087	3,008,364	1,728,623	1,457,689	1,702,187	1,906,365	1,989,821	1,894,488	1,879,540	1,824,505	1,404,748	1,585,532	1,911,287	2,143,246	2,324,589	2,162,701	
Net Railway Operating Income	5,152,528	8,920,962	4,159,081	2,206,459	2,467,963	1,765,992	2,894,996	991,989	264,900	900,078	345,477	1,008,601	1,426,290	3,410,268	3,174,987	3,171,219	
Non-Operating Income																	
Dividend Income	-	-	-	-	-	300	900	-	-	-	-	-	-	2,000	-	217	
Income from Funded Securities	2,560	3,115	2,508	456	918	15,105	19,587	22,996	24,857	20,278	16,853	18,857	32,408	63,960	59,218	60,946	
Income from Unfunded Secs. & Accts.	80,581	15,636	1,333	19,085	1,008	2,861	5,018	5,941	5,881	9,447	41,629	19,822	22,982	9,985	21,975	32,022	
Other	147,907	159,370	106,087	92,809	132,669	141,486	119,041	-	-	55,199	72,855	85,769	61,198	66,016	46,886	39,908	
Total	230,548	178,121	109,668	112,028	134,590	157,186	144,524	132,901	90,527	84,984	130,937	124,457	116,588	130,961	128,219	132,093	
Miscellaneous deductions from Income	30,348	138,730	36,852	19,779	19,481	15,619	14,087	5,109	5,532	9,380	13,133	19,965	15,921	14,906	11,084	13,797	
Income Available for Fixed Charges	5,352,728	8,962,344	4,232,097	2,298,908	2,583,972	1,909,461	3,025,383	1,119,882	361,905	975,800	465,181	1,113,094	1,527,284	3,526,090	3,294,739	3,298,972	
Fixed Charges:																	
Rent for Leased Road & Equipment	650	3,348	2,000	4,538	979	5,127	-	-	-	273	1,286	-	-	512	2,102	-	
Interest on Funded Debt	2,786,739	2,781,535	2,784,425	2,790,975	2,681,446	2,682,298	2,708,128	2,715,863	2,784,908	2,732,546	2,688,014	2,775,784	2,617,380	2,588,921	2,440,366	2,351,864	
Interest on Unfunded Debt	1,814	7,795	7,820	2,547	121,280	119,417	125,882	84,024	1,908	827	960	1,442	32,446	251,987	8,808	9,574	
Amortization of Discount on Funded Debt	3,285	21,737	21,737	21,737	21,737	20,889	20,889	20,889	-	-	-	-	-	-	-	-	
Total Fixed Charges	2,792,488	2,814,415	2,815,982	2,819,797	2,825,442	2,827,731	2,854,899	2,820,776	2,786,816	2,733,646	2,690,260	2,780,302	2,649,906	2,841,420	2,451,276	2,361,438	
Net Income	2,559,839	6,148,021	1,414,115	524,789-D	243,530-D	925,969-D	177,745	1,830,806-D	2,574,909-D	1,760,845-D	2,207,139-D	1,674,109-D	1,122,622-D	674,980	843,094	938,485	

Source: Company records
January 10, 1945

stern Judicial District of Missouri
Company, Debtor
ailroad, No. 6955

Group Exhibit 38.

Witness_____

1932	1931	1930	1929	1928	1927	1926	1925	1924	1923	1922	1921	1920	1919	1918	1917	March 1, to Dec.31, 1916
0,786,326	$15,455,533	$18,819,492	$18,917,440	$18,564,495	$19,082,675	$20,104,886	$15,860,110	$15,007,605	$12,885,679	$10,871,628	$11,804,783	$15,720,998	$ 9,877,734	$ 8,144,021	$ 8,264,277	$ 8,889,218
1,330,274	2,150,979	3,269,999	3,389,547	3,455,559	4,215,954	4,080,977	2,496,901	2,729,806	2,008,397	1,978,080	2,140,969	3,278,148	2,228,688	1,490,294	1,088,128	1,054,920
1,696,913	2,269,679	3,062,588	2,980,961	2,972,497	3,229,455	3,231,257	2,284,954	1,971,812	1,771,819	1,614,689	1,801,951	2,468,181	1,785,915	1,281,284	874,708	880,882
322,135	621,305	660,224	704,406	615,256	589,508	557,509	474,111	351,418	371,418	322,073	312,694	308,589	143,297	117,899	216,088	198,946
2,857,087	3,996,464	5,180,908	5,549,415	5,617,250	6,265,137	8,744,804	4,491,914	3,829,241	3,236,391	2,930,325	3,885,331	4,907,884	3,064,894	2,618,138	1,973,088	2,030,589
22,555	47,017	86,271	68,541	75,594	81,698	77,148	28,068	-	-	-	-	904	29,618	7,744	-	-
646,229	850,008	922,228	933,173	897,506	825,412	688,182	655,788	581,426	469,547	422,426	478,148	539,411	430,977	310,254	274,827	440,484
46,415	49,459	130,296	132,510	150,962	108,573	119,090	56,288	34,100	23,385	17,405	31,027	15,251	-	67	22,217	31,750
7,006,927	9,991,995	15,061,918	15,475,553	15,480,551	15,100,755	16,342,427	10,614,308	9,459,305	7,891,182	7,256,366	8,854,854	11,508,945	7,886,648	6,088,836	4,991,854	4,827,615
2,777,491	3,543,541	5,767,574	5,444,405	5,125,944	5,981,920	5,762,379	5,245,602	5,548,300	4,472,497	3,813,387	2,948,589	2,215,753	1,699,112	2,109,848	2,491,743	2,087,906
592,210	732,155	728,654	795,758	665,546	901,677	942,577	819,325	775,094	804,700	588,735	485,800	411,808	278,908	318,809	306,884	180,888
11,064	10,921	12,450	18,646	15,020	11,117	5,791	18,340	5,783	23,256	4,632	6,371	6,151	8,117	1,200	2,889	2,779
2,174,256	2,800,468	5,026,291	4,630,022	4,305,579	3,089,125	4,814,011	4,408,137	4,787,443	3,644,541	3,019,942	2,479,358	1,809,400	1,608,189	1,788,738	2,171,515	1,906,201
512,898	537,180	529,299	869,408	836,642	776,472	487,507	301,758	241,089	884,575	365,819	151,225	36,944	101,740	223,205	204,884	202,141
1,885,552	1,911,557	2,148,586	2,324,839	2,188,701	2,079,974	1,691,028	814,715	1,006,493	1,161,177	778,985	555,496	1,081,987	671,904	380,609	617,416	319,108
1,006,601	1,426,290	5,410,808	5,174,587	5,171,219	1,765,823	3,890,480	3,895,174	3,921,979	3,297,959	2,706,886	2,095,088	853,397	1,236,025	1,681,713	2,088,924	1,887,289
-	-	2,000	-	217	-	-	-	-	-	1,018	19,492	-	-	-	-	-
16,857	32,408	63,950	59,218	60,968	4,525	400	400	400	400	4,417	46,810	34,221	61,139	55,172	49,871	-
19,882	22,992	9,865	31,975	32,022	116,555	77,946	157,523	98,243	108,508	94,488	37,083	42,814	33,884	62,986	79,898	48,848
85,788	61,186	56,019	42,022	26,208	37,065	7,097	34,686	48,854	233,899	46,975	38,145	138,685	8,836	11,889	10,088	7,482
122,457	116,586	130,851	133,215	119,409	156,781	85,401	192,609	147,197	359,802	146,888	142,488	215,680	101,617	129,015	139,852	83,288
19,965	15,821	14,908	11,044	13,787	10,044	11,375	10,115	9,789	48,392	44,547	80,089	278,911	39,688	40,886	39,880	39,881
1,106,094	1,527,284	5,526,050	5,296,738	5,296,871	1,915,810	3,864,506	4,077,649	4,059,387	3,809,349	2,899,127	2,187,307	773,146	1,300,014	1,769,460	2,187,996	1,801,344
-	-	512	2,102	-	-	-	-	-	-	-	-	-	-	-	-	-
2,778,754	2,617,280	2,588,921	2,440,966	2,331,864	2,087,764	1,882,258	1,485,458	1,027,320	1,186,680	1,809,821	1,114,390	1,287,606	1,682,864	1,080,819	913,127	678,180
1,642	32,446	281,987	8,608	8,574	58,284	2,126	27,422	32,787	985	682	9,648	4,930	17,689	310	6,101	63,889
-	-	-	-	-	-	16,806	39,175	39,174	-	-	-	-	-	-	-	-
2,780,202	2,648,708	2,851,100	2,451,674	2,340,438	2,116,048	1,881,280	1,530,055	1,102,861	1,187,673	1,804,813	1,124,038	1,292,736	1,499,825	1,081,129	919,228	542,019
1,674,109-D	1,122,422-D	674,950	845,064	986,435	202,438-D	1,783,278	2,547,638	2,907,128	2,441,676	1,094,644	1,083,321	Dr. 490,590	Dr.139,909	888,321	1,229,788	1,089,325

Includes Corporate & Federal Operations from Jan.1, 1918 to Feb.28,1920.

[fol. 269] **Group Exhibit 39.**

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6885

Gulf Coast Lines

Condensed Income Account.
1944

Railway Operating Revenues	$47,753,234
Railway Operating Expenses	
Maintenance of Way and Structures	7,562,741
Maintenance of Equipment	4,380,404
Traffic	662,449
Transportation—Rail Line	11,351,986
Miscellaneous Operations	181,788
General	908,658
Total Railway Operating Expenses	25,044,025
Net Revenue from Railway Operations	22,709,199
Railway Tax Accruals	12,598,921
Railway Operating Income	10,100,278
Rent Income	551,459
Rents Payable	4,069,149
Net Railway Operating Income	6,581,588
Non-Operating Income—	
Dividend Income	3
Income from funded securities	3,013
Income from unfunded securities and accounts	133,306
Other	116,430
Total	307,744
Miscellaneous deductions from income	54,099
Income available for fixed charges	6,845,233
Fixed charges:	
Rent for Leased Road and Equipment	3,974
Interest on funded debt	2,733,693
Interest on unfunded debt	4,213
Total fixed charges	2,790,984
Net income	4,054,250

Source: Company records

March 9, 1945

[fol. 270]

Group Exhibit 40

In the District Court of the United States, Eastern Division

In the Matter of Missouri Pacific Railroad

In Proceedings for the Reorganization of

Gulf Coast Lines

Comparison of Revenues, Gross Additions

1916—1931

	Mar. 1 to Dec. 31, 1916	1917	1918	1919	1920	1921	1922	1923
Total Railway Operating Revenues								
For Year Shown	$6,589,918	$ 6,866,577	$ 8,144,081	$ 9,577,754	$13,730,998	$11,504,783	$10,871,682	$12,362,6
Cumulative	.....	13,456,495	21,600,576	31,178,330	44,899,328	56,404,111	67,275,793	79,639,4
Gross Additions and Betterments								
For Year Shown	350,799	1,112,981	186,859	113,907	1,277,030	2,844,703	792,870	893,2
Cumulative	.....	1,463,780	1,650,639	1,764,546	3,041,576	5,886,279	6,679,149	7,572,4
Percent As & Bs of Revenues								
For Year Shown	5.3	16.2	2.3	1.2	9.3	24.7	7.3	7.2
Cumulative	...	10.9	7.6	5.7	6.8	10.4	9.9	9.5
Net Income								
For Year Shown	1,059,325	1,238,768	688,331	139,909-D	499,590-D	1,063,531	1,694,844	2,441,6
Cumulative	.....	2,298,093	2,986,424	2,846,515	2,346,925	3,410,446	5,105,090	7,546,7
Dividends								
For Year Shown	.....	.....	.....	.....	297,370	667,997	889,861	1,038,1
Cumulative	.....	.....	.....	.....	.....	965,367	1,855,228	2,893,4

Source: Company Records

D—Deficit

January 8, 1945.

Group Exhibit 40.

Group Exhibit 40.

art of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6935

Gulf Coast Lines

Comparison of Revenues, Gross Additions and Betterments, etc.
1916—1931

20	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
0,998	$11,504,783	$10,871,682	$12,363,679	$15,007,603	$ 15,860,110	$ 20,104,866	$ 19,082,675	$ 18,664,495	$ 18,917,440	$ 18,819,492	$ 13,435,533
9,328	56,404,111	67,275,793	79,639,472	94,647,075	110,507,185	130,612,051	149,694,726	168,359,221	187,276,661	206,096,153	219,531,686
7,030	2,844,703	792,870	893,276	1,422,667	4,070,050	3,399,986	6,074,361	2,682,837	3,835,671	2,029,832	1,005,199
1,576	5,886,279	6,679,149	7,572,425	8,995,092	13,065,142	16,465,128	22,539,489	25,222,326	29,057,997	31,087,829	32,093,028
9.3	24.7	7.3	7.2	9.5	25.7	16.9	31.8	14.4	20.3	10.8	7.5
6.8	10.4	9.9	9.5	9.5	11.8	12.6	15.1	15.0	15.5	15.1	14.6
9,590-D	1,063,521	1,694,644	2,441,676	(2,957,126	2,547,633	1,783,278	(202,438-D	(956,433	(845,064	(674,950	(1,122,422-D
6,925	3,410,446	5,105,090	7,546,766	10,503,892	13,051,525	14,834,803	14,632,365	15,588,798	16,433,862	17,108,812	15,986,390
7,370	667,997	889,861	1,038,198	(3,485,379	1,038,198	1,038,198	(1,038,198	(1,038,198	(1,038,198	(1,038,198	(1,038,198
.....	965,367	1,855,228	2,893,426	6,378,805	7,417,003	8,455,201	9,493,399	10,531,597	11,569,795	12,607,993	13,646,191

[fol. 271] **Group Exhibit 41.**

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 4922

Gulf Coast Lines

Charges to Operating Expenses in Connection with Additions and Betterments

January 1, 1935 to December 31, 1944

Year	Amount
1935	$343,519
1936	592,187
1937	715,093
1938	279,005
1939	285,601
1940	756,160
1941	234,470
1942	101,936
1943	90,946
1944	188,264
1945	129,317
1946	306,739
1947	213,324
1948	254,085
1949	236,287
1940	202,723
1941	163,519
1942	260,935
1943	432,197
1944	633,771
Averages Per Year:	
(a) Period of Baldwin Improvement Program (1935-1939)	$511,921
(b) From end of Baldwin Improvement Program to beginning of War (1941-1939)	183,715
(c) War Period 1940-1944	334,590

Note: Information not available for Gulf Coast Lines prior to 1935.

Source: Company Records.

March 13, 1945.

[fol. 273] **Group Exhibit 42.**

In The
District Court of the United States
Eastern Division, Eastern Judicial District
of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings For the Reorganization of a Railroad, No. 8335

Missouri Pacific Railroad Company
Interest Paid on Secured Serial 5¼% Bonds
Compared with Dividends Received on Pledged NOT&M Stock
1926—1933

	Secured Serial 5¼% Bonds		NOT&M Stock Pledged for Secured Serial 5¼% Bonds	
	Outstanding Dec. 31st (1)	Interest Accrued and Paid @ 5¼% (2)	Par Value of Stock (3)	Dividends Accrued and Paid @ 7% (4)
1926	$12,156,000	$ 17,267	$13,156,000	$ 23,012
1927	12,156,000	690,630	13,156,000	920,920
1928	12,156,000	690,630	13,156,000	920,920
1929	12,156,000	690,630	13,156,000	920,920
1930	12,156,000	690,630	13,156,000	920,920
1931	12,643,000	653,414	13,643,000	917,252
1932	12,140,000	608,232	13,146,000	.....
1933	12,140,000	.....	13,146,000	.....
Total		$4,076,774		$4,634,534

Notes: Secured Serial 5¼% Bonds, dated December 1, 1926.

Interest accrued, shown in Column (2), + 5¼ × 7% produces dividends received on collateral pledged on an accrual basis.

Full 7% dividend paid on NOT&M stock in 1931, no dividends paid thereafter.

Interest on Secured Serial 5¼ bonds paid to December 1, 1932.

Stock pledged in 1932 and 1933 included 60 shares not released by Trustee in excess of shares required under indenture.

On December 31, 1926, $12,180,500 of NOT&M stock was still pledged under the M. P. Fifteen-Year 7% Notes which had not yet been retired through the sale of the 5¼% Secured Serials. Stock shown for the 5¼% Bonds above is that which was ultimately pledged for them.

On December 31, 1931, an additional $505,000 of stock was pledged, but this was released in April, 1932.

On December 31, 1932, an additional $505,000 of stock was pledged, but this was released in March, 1933.

Source: Company Records

Date: January 3, 1945

[fol. 278]

Group Exhibit 43.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6965

The St. Louis, Brownsville and Mexico Railway Company

Analysis of Balance Sheets
1934—1941

	1941	1940	1939	1938	1937	1936	1
Investments	$39,633,143	$39,241,915	$39,651,111	$37,804,509	$38,445,694	$36,139,299	$
Less Depreciation	2,397,745	1,771,545	1,454,386	1,307,970	1,178,906	962,143	
Net Investments	37,215,397	37,470,370	37,196,725	36,496,539	37,266,788	35,147,146	3
Current Assets	941,225	1,150,525	1,306,049	1,214,996	1,274,619	1,305,962	1
Deferred Assets	5,849	25,457	49,181	4,178	5,197	3,794	
Unadjusted Debits (Excluding Inter-Company Items)	755,985	732,053	894,695	1,182,804	782,649	840,888	
Total	1,906,861	1,908,011	2,250,925	2,330,978	2,062,465	2,150,644	1
Current Liabilities (Excluding Dividends Matured Unpaid)	936,940	1,152,550	1,211,551	948,208	1,711,769	1,294,985	
Deferred Liabilities	10,230	28,206	60,179	1,902	17,290	1,578	
Unadjusted Credits (Excluding Inter-Company Items)	142,761	123,744	142,647	130,804	262,169	260,042	
Total	1,089,931	1,304,495	1,410,518	1,140,884	1,992,211	1,556,605	1
Appropriated Surplus	1,894,572	1,916,393	1,894,726	895,114	947,897	922,196	
Net Excess Assets over Liabilities shown	37,947,685	38,197,318	37,680,727	38,044,681	35,806,186	31,798,973	29
Long Term Debt, including Equipment Trusts	15,007,242	15,225,242	15,454,242	15,984,611	15,985,242	15,171,242	13
Net Assets Before Inter-Company Debt	12,940,223	12,921,976	11,926,285	10,823,679	9,149,243	8,670,269	8
Inter-Company Debt; Net of Amounts Included in:							
Matured Dividends Unpaid (1)	1,100,000	.....	.....	.....	.....	.....	...
Other Unadjusted Credits	9,088,635	8,141,734	8,190,185	6,254,483	5,291,954	3,813,313	3
Other Unadjusted Debits	654,704	873,688	1,157,513	972,200	838,772	342,247	
Net Debt	10,133,931	7,268,041	7,049,642	5,782,113	4,745,282	3,160,671	2
Net Assets to Support Stock	2,721,292	5,613,935	4,855,743	4,997,267	4,299,561	4,597,669	5
Capital Stock	500,000	500,000	500,000	500,000	500,000	500,000	
Earned Surplus	2,221,292 (1)	5,113,935	4,455,743	4,497,267	3,799,561	4,097,669	5
Total Equity	2,721,292	5,613,935	4,955,743	4,997,267	4,299,561	4,597,669	5
Increase in Net Investment							
For Year	254,973 D	273,654	1,699,206	1,229,751	2,117,642	2,543,819	3
Cumulative	11,521,913	11,776,886	11,503,232	9,873,939	8,471,514	6,353,872	3
Increase in Debt (2)							
For Year	2,653,239	1,691 D	753,259	1,199,199	2,235,411	2,650,254	1
Cumulative	11,662,367	9,010,377	9,011,978	8,253,718	7,144,519	4,909,107	1

Source: Comstock Exhibit No. 34
Company Records.

March 15, 1945.

D—Denotes decrease.

Note (1)—Excludes from Dividends matured unpaid $1,400,000 declared as part
July 11, 1931, but never paid and written off books, March, 1938. Ba
is increased by same amount.

Note (2)—Increase in debt represents increase in long term debt and inter-co

1926	1925	1924
$22,130,229	$20,413,486	$17,474,952
983,148	813,989	681,468
23,147,148	19,599,497	16,793,484
1,885,343	1,279,784	1,099,373
2,704	2,438	.....
540,382	455,172	260,740
2,428,228	1,737,294	1,360,113
1,584,235	869,250	844,659
1,578	1,007	711
269,043	434,010	430,844
1,855,506	1,304,267	1,266,214
922,196	921,244	917,716
21,796,272	19,110,280	15,969,667
15,131,342	12,913,342	12,913,342
6,676,230	6,196,938	2,056,225
.....	.....	.....
2,512,218	2,963,166	870,304
342,347	665,679	300,640
2,169,871	2,297,487	569,664
4,507,059	3,899,451	2,486,661
500,000	500,000	500,000
4,007,059	3,399,451	1,986,661
4,507,059	3,899,451	2,486,661
2,543,649	2,805,013	.....
5,353,982	2,805,013	.....
2,080,324	1,727,823	.....
2,808,307	1,727,823	.....

declared as part of $3,500,000 dividend
, March, 1926. Earned surplus for 1921

bt and inter-company debt.

[fol. 274]

Group Exhibit 44

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6935

The Beaumont, Sour Lake and Western Railway Company

Analysis of Balance Sheets 1924—1931

	1931	1930	1929	1928	1927	1926	1925	192
Investments	$5,116,323	$5,101,994	$4,931,255	$4,438,530	$5,969,994	$3,841,765	$3,761,341	$3,682
Less Depreciation	2,050	1,718	1,486	.....	.....	.....	.....	....
Net Investments	5,114,183	5,100,276	4,929,769	4,438,530	5,969,994	3,841,765	3,761,341	3,682
Current Assets	96,630	134,632	228,240	212,418	208,143	244,728	186,584	143
Deferred Assets	3,244	3,554	2,632	1,350	1,063	1,089	333	1
Unadjusted Debits (Excluding Inter-Company Items)	186,025	236,496	194,252	366,074	262,377	239,943	262,496	247
Total	385,899	374,682	425,784	579,842	471,583	575,780	455,948	393
Current Liabilities	137,885	253,228	219,242	221,173	272,734	216,227	195,685	199
Deferred Liabilities	.....	2	13,377	2	.....	.....	1	....
Unadjusted Credits (Excluding Inter-Company Items)	87,191	98,466	92,135	98,195	92,854	91,084	118,314	94
Total	225,076	356,696	325,354	319,370	465,588	307,961	309,000	293
Appropriated Surplus	121,364	120,539	119,469	118,862	118,538	116,362	115,316	115
Net Excess Assets over Liabilities Shown	5,053,651	4,997,723	4,910,730	4,580,340	5,847,458	3,998,222	3,792,973	3,682
Long Term Debt	2,057,825	2,057,825	2,057,825	2,071,295	2,977,989	2,074,249	2,074,249	2,074
Net Assets before Inter-Company Debt	2,995,826	2,939,898	2,852,905	2,508,645	2,869,469	1,919,083	1,718,724	1,608
Inter-Company Debt; Net of Amounts Included in:								
Other Unadjusted Credits	3,227,424	2,948,019	2,586,429	2,342,281	2,496,050	1,346,981	1,063,223	1,139
Other Unadjusted Debits	44,875	53,441	53,635	63,086	65,679	73,741	145,979	193
Net Debt	3,182,549	2,894,578	2,532,794	2,279,195	2,430,371	1,273,240	938,244	945
Net Assets to Support Stock	186,723 D	45,320	320,111	329,350	439,098	645,843	732,480	663
Capital Stock	85,000	85,000	85,000	85,000	85,000	85,000	85,000	85
Earned Surplus	271,723 D	39,680 D	235,111	244,350	354,098	560,843	697,480	577
Total Equity	186,723 D	45,320	320,111	329,350	439,098	645,843	782,480	663
Increase in Net Investments								
For Year	13,906	170,507	491,239	1,531,464 D	2,118,229	80,424	77,997	....
Cumulative	1,420,838	1,416,932	1,246,425	755,186	2,276,650	158,421	77,997	....
Increase in Debt (1)								
For Year	287,971	361,784	339,629	1,157,340 D	2,060,841	336,996	9,076 D	....
Cumulative	2,220,805	1,932,834	1,571,050	1,231,421	2,388,761	327,920	9,076 D	....

Source: Comstock Exhibit No. 39
Company Records
March 15, 1945.

D—Denotes deficit or decrease.

Note (1)—Increase in debt represents increase in long term debt and inter-company debt.

	1925	1924
65	$3,761,341	$3,683,344
..	.....	.....
65	3,761,341	3,683,344
28	186,564	148,885
39	333	1,530
63	268,496	247,610
30	455,943	398,075
27	195,685	199,108
..	1	.....
24	113,514	84,500
51	309,000	283,608
62	115,316	115,291
32	3,792,973	3,682,530
49	2,074,249	2,074,249
32	1,718,724	1,608,271
31	1,082,223	1,139,128
41	145,979	193,508
40	936,244	945,320
43	782,480	662,951
00	85,000	85,000
43	697,480	577,951
43	782,480	662,951
24	77,997	.....
21	77,997	.....
96	9,076 D	.....
20	9,076 D	.....

ter-company debt.

[fol. 275]

Group Exhibit 45.

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 8085

The St. Louis, Brownsville and Mexico Railway Company

Analysis of Profit and Loss and Dividends Declared
1925—1931

	1931	1930	1929	1928	1927	1926	1925	Total
Credit balance at beginning of Period	$5,113,935	$4,455,743	$4,407,257	$3,298,541	$4,007,859	$3,298,451	$1,966,681	$1,966,681
Credits:								
Credit balance transferred from income	897,878	1,589,187	1,108,044	1,113,771	820,789	1,464,748	1,469,289	7,963,771
Profit on road and equipment sold	.....	.....	.....	.....	.....	198	.....	198
Delayed income credits	.....	.....	.....	.....	.....	.....	.....	.....
Unrefundable overcharges	1,845	1,461	19-D	7,252	1,492	5,998	9,236	27,183
Donations	17,984	11,853	9,622	27,547	45,370	983	3,536	116,896
Miscellaneous Credits	560	7,091	840	445	87,186	87,486	716	184,323
Total	418,267	1,619,292	1,118,487	1,149,015	953,758	1,558,991	1,482,539	8,179,969
Debits: (Excl. Dividends)								
Debit balance transferred from income	.....	.....	.....	.....	.....	.....	.....	.....
Surplus appropriated for investment in physical property	17,984	11,853	9,622	27,547	45,370	983	3,536	116,896
Debt discount extinguished through surplus	.....	.....	.....	142	14,570	61,259	.....	75,971
Loss on retired road and equipment	2,906	11,996	12,297	7,906	3,870	2,986	6,321	48,281
Delayed income debits	522,860	.....	.....	.....	.....	.....	.....	522,860
Miscellaneous debits	5,041	6,653	6,611	1,813	1,736	53,986	170	74,009
Total	555,731	30,502	28,530	37,197	65,543	117,495	10,049	846,306
Credit balance before dividends	4,976,471	6,044,533	5,496,714	5,310,359	4,895,315	4,739,947	3,399,451	9,311,194
Dividend appropriations of surplus	4,155,079	930,598	1,039,971	902,113	976,754	732,992	.....	8,689,506
Credit balance after dividends	821,392	5,113,935	4,456,743	4,407,257	3,298,541	4,007,959	3,399,451	821,392

Source: I. C. C. Statistics of Railways in the United States.

March 8, 1945.

[illegible]

[illegible]

[illegible]

[fol. 276] **Group Exhibit 46.**

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad, No. 6365

The St. Louis, Brownsville and Mexico Railway Company

Analysis of Dividends Declared and Paid
1924—1932

Date of Declaration	Amount	Date of Payment	Elapsed Time Between Declaration and Payment — Years	Months	Days
Apr. 29, 1924	$ 454,911.40	June 12, 1924	–	1	14
Feb. 13, 1926	100,000.00	Sept. 15, 1926	–	6	23
Mar. 30, 1926	225,719.23	July 20, 1926	–	3	20
Aug. 17, 1926	41,244.52	Oct. 26, 1926	–	2	9
Dec. 29, 1926	120,617.30	June 6, 1928	1	5	8
Dec. 29, 1926	229,206.73	June 6, 1928	1	5	8
June 22, 1927	8,531.89	Aug. 8, 1927	–	1	16
Dec. 17, 1927	432,080.87	Apr. 10, 1928	–	3	23
Dec. 17, 1927	637,640.77	Apr. 10, 1928	–	3	23
Jan. 25, 1928	192,650.22	June 20, 1930	2	4	25
Oct. 30, 1928	121,650.72	Dec. 25, 1928	–	1	25
Oct. 30, 1928	278,311.25	Dec. 22, 1928	–	1	21
Jan. 19, 1929	229,497.46	July 24, 1929	–	6	5
June 15, 1929	277,746.17	Dec. 6, 1929	–	5	21
Oct. 24, 1929	297,612.99	June 20, 1930	–	7	26
Oct. 24, 1929	235,113.21	June 20, 1930	–	7	26
June 19, 1930	131,075.01	June 19, 1931	1	–	–
June 19, 1930	229,643.63	June 19, 1931	1	–	–
Dec. 6, 1930	175,563.70	June 19, 1931	–	6	13
Dec. 6, 1930	281,590.06	June 19, 1931	–	6	13
June 17, 1931	216,188.25	Not paid	–	–	–
June 17, 1931	228,990.53	" "	–	–	–
July 11, 1931	500,000.00	July 28, 1931			17
	350,000.00	Sept. 10, 1931		1	29
	150,000.00	Sept. 21, 1931		2	10
	193,000.00	Dec. 30, 1931		5	19
	500,000.00	Mar. 30, 1932		8	19
	500,000.00	May 11, 1932		10	
	100,009.00	Dec. 13, 1932	1	5	2
	1,400,000.00	Not paid			
	3,500,000.00				

Source: Comstock exhibits No. 121, 130
Company records

March 13, 1945

[fol. 277] Group Exhibit 47.

In the
District Court of the United States
Eastern Division, Eastern Judicial District
of Missouri

In the Matter of Missouri Pacific Railroad Company, Debtor	)	In Proceedings For the Reorganization of a Railroad, No. 6935

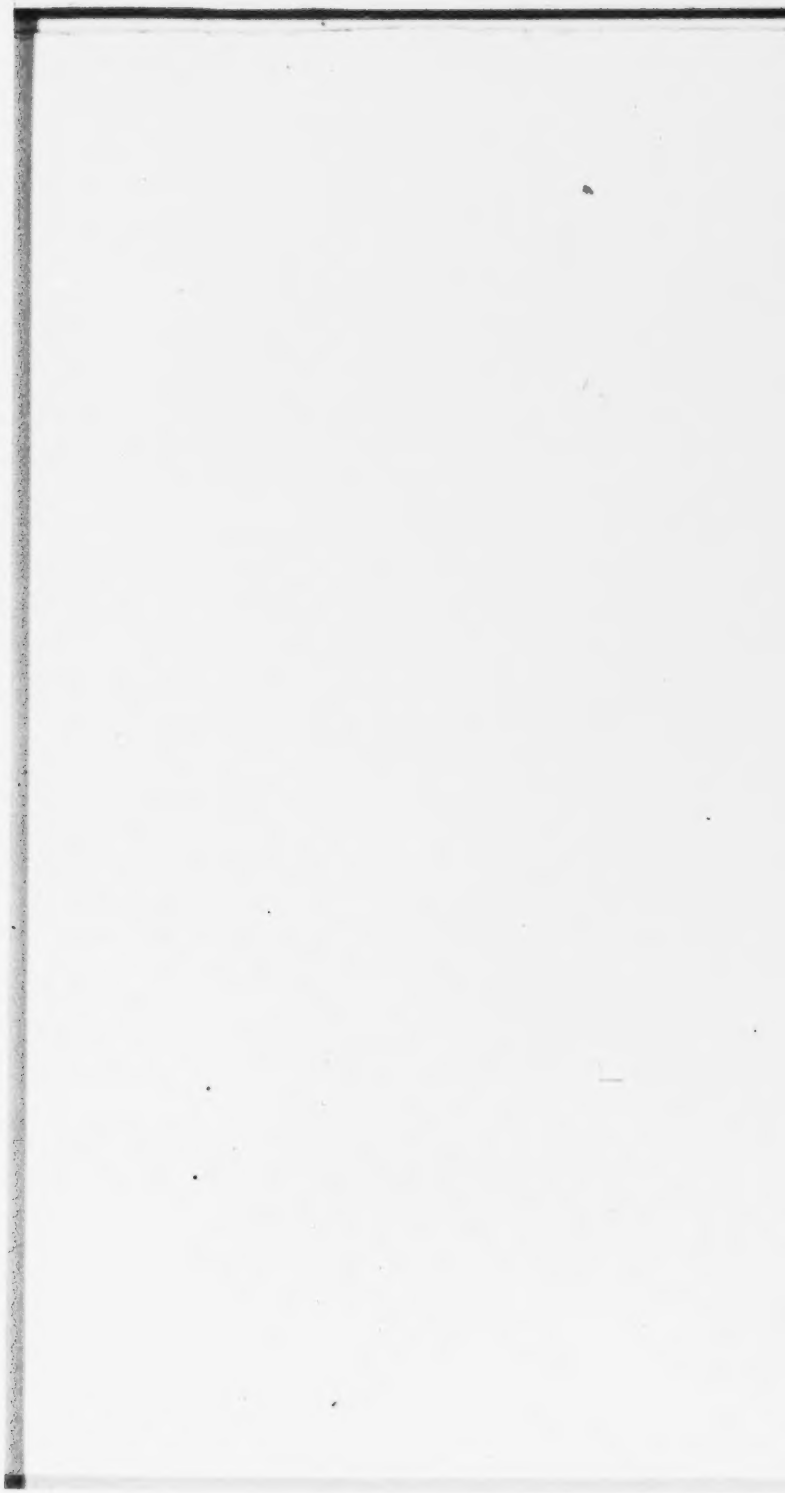
The St. Louis, Brownsville and Mexico Railway Company

Net Income by Months
1930—1932

	Net Income		
	1930	1931	1932
January	$ 232,573	$ 159,415	$ 68,59
February	151,286	21,463 D	152,43
March	292,961	38,529	129,69
April	214,990	176,297	135,07
May	173,595	61,045	47,17
June	43,010	108,482	19,19
July	67,710	78,584 D	49,93
August	197,625	42,455 D	58,45
September	69,742	78,418 D	70,80
October	115,928	10,748 D	33,75
November	2,607 D	24,296 D	30,97
December	42,374	69,934	4,96
Total	1,599,187	397,879	813,18

Source: Company records

December 21, 1944



VOLUME II OF EXHIBITS

(Pages 315 to 666)

Supreme Court of the United States

OCTOBER TERM, 1967

No. 455

ANDREW W. COMSTOCK, A HOLDER OF MISSOURI PACIFIC RAILROAD COMPANY 4½% SECURED SERIAL GOLD BONDS, ETC., PETITIONER,

v.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 456

ORVILLE GRAHAM, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ETC., PETITIONER,

v.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 457

J. A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, ETC., PETITIONER,

v.

GROUP OF INSTITUTIONAL INVESTORS, ETC., ET AL.

No. 454

ANDREW W. COMSTOCK, PETITIONER,

v.

J. A. THOMPSON, TRUSTEE OF THE NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, DEBTOR, ET AL.

PETITIONS FOR CERTIORARI FILED NOVEMBER 28, 1967.

CERTIORARI GRANTED FEBRUARY 19, 1968.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 13,376. In Bankruptcy.

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000.00, principal amount, of said bonds,

Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Appellees.

No. 13,377. In Bankruptcy.

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,

Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Appellees.

No. 13,378. In Bankruptcy.

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and fourteen other holders of at least $900,000.00, principal amount, of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, which are secured by a pledge of shares of the capital stock of said New Orleans, Texas and Mexico Railway Company,

Appellant,

vs.

GROUP OF INSTITUTIONAL INVESTORS holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Appellees.

No. 13,379. In Bankruptcy.

ANDREW W. COMSTOCK,

Appellant,

vs.

GUY A. THOMPSON, Trustee of New Orleans, Texas & Mexico Railway Company, Debtor, et al.,

Appellees.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED MAY 21, 1946

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First and Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917 (Extracts from Ex. 164 introduced in evidence at hearings before Interstate Commerce Commission, Tr. 292; introduced at hearings in Court below, May 9, 1946, R. 1196) 312

General Mortgage, Missouri Pacific Railroad Company, dated April 2, 1917 (Extracts from Ex. 167 introduced in evidence at hearings before Interstate Commerce Commission, Tr. 312; introduced at hearings in Court below, May 9, 1946, R. 1190) 324

Petition (No. 44) of Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under First and Refunding Mortgage of Missouri Pacific Railroad Company, seeking sequestration, etc. (introduced in evidence May 9, 1946 at hearings in Court below, R. 1190) 335

Order (No. 44b) of the District Court entered on Petition (No. 44) of Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under First and Refunding Mortgage of Missouri Pacific Railroad Company (also printed at pp. 309-313 of the District Court printed record) 354

Copy of Note of New Orleans, Texas & Mexico Railway Company, dated January 27, 1933, in principal sum of $2,498,500, payable to Missouri Pacific Railroad Company or order (Extract from Ex. 227 introduced in evidence at hearings before Interstate Commerce Commission, Tr. 530) 358

Copy of Note of New Orleans, Texas & Mexico Railway Company, dated February 28, 1933, in principal sum of $7,456,726.78, payable to Missouri Pacific Railroad Company or order (Extract from Ex. 227 introduced in evidence at hearings before Interstate Commerce Commission, Tr. 530) 359

Affidavit of Thomas T. Railey verified January 19, 1945 (introduced in evidence, this record, p. 744) 360

FIRST AND REFUNDING MORTGAGE

MISSOURI PACIFIC RAILROAD COMPANY
dated April 2, 1917

(Extracts)

(Mortgage introduced in evidence, this Record, page 1190)

INDENTURE, dated the second day of April, 1917, between MISSOURI PACIFIC RAILROAD COMPANY (hereinafter called the Railroad Company), party of the first part, and GUARANTY TRUST COMPANY OF NEW YORK (hereinafter called the Corporate Trustee) and BENJAMIN F. EDWARDS (hereinafter called the Individual Trustee)—the Corporate Trustee and the Individual Trustee being hereinafter collectively called the Trustees—parties of the second part.

* * *

NOW THEREFORE THIS INDENTURE WITNESSETH that in order to secure the payment of the principal and interest of all the Refunding Bonds at any time issued and outstanding under this indenture according to their tenor and effect, and to secure the performance and observance of all the covenants and conditions herein and in the Refunding Bonds contained, and to declare the terms and conditions upon which the Refunding Bonds are to be issued and secured hereunder, and for and in consideration of the premises and of the acceptance or purchase of said bonds by the holders thereof, and of the sum of one hundred dollars, lawful money of the United States of America, to the Railroad Company duly paid by the Trustees at or before the ensealing and delivery of this indenture, the receipt whereof is hereby acknowledged, MISSOURI PACIFIC RAILROAD COMPANY, the party of the first part, has executed and delivered this indenture, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, pledge and set over, unto said GUARANTY TRUST

COMPANY OF NEW YORK and BENJAMIN F. EDWARDS, the parties of the second part, and unto their successors in the trust and their assigns forever:

(Description of Mortgaged Properties)

* * *

TOGETHER WITH all and singular the tenements and hereditaments belonging or in any wise appertaining to the railroads and other properties above described, or to any part thereof; and the reversion and reversions, remainder and remainders, tolls, income, rents, revenues, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Railroad Company, of, in and to the railroads and other properties above described, and every part and parcel thereof, whether now owned or hereafter acquired.

TO HAVE AND TO HOLD the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustees, their successor or successors and assigns forever;

Subject generally, however, as to the railroads, stocks, bonds, equipment, and other property and franchises now or hereafter affected thereby, to the several existing mortgages described in Sections 3 and 4 of Article Three hereof, in so far but only in so far as the same by their terms or by the terms of existing indentures supplemental thereto attach to such railroads, stocks, bonds, equipment and other property and franchises as a lien prior to the lien hereof; and also, as to any other property and franchises hereafter acquired by the Railroad Company and becoming subject to the lien of this indenture, to any liens thereon existing at the time of such acquisition by the Railroad Company;

IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of all the present and future holders of the bonds and interest obligations issued and to be issued

under this indenture, and for the enforcement of the payment of said bonds and obligations when payable, and the performance of and compliance with the covenants and conditions of this indenture, without preference, priority or distinction as to lien or otherwise of any one bond over any other bond by reason of priority in the issue or negotiation thereof, or otherwise, so that each and every bond hereby secured shall have the same right, lien and privilege under this indenture, and, subject to the terms hereof, be equally and proportionately secured hereby, as if all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this indenture, it being intended that the lien and security of this indenture shall take effect from the day of the execution and delivery hereof, without regard to the time of such actual issue, sale or disposition of said bonds, and as though upon said date all of said bonds had been actually issued, sold and delivered to and were in the hands of innocent holders thereof for value.

AND IT IS HEREBY COVENANTED AND DECLARED that all bonds to be issued hereunder, with the coupons for interest thereon, are to be issued, authenticated and delivered, and that the railroads, property, stocks and bonds at any time mortgaged, pledged or assigned to the Trustees hereunder (which are hereinafter sometimes called collectively the trust estate) are to be held by the Trustees, subject to the further covenants, conditions, uses and trusts hereinafter set forth; and it is agreed and covenanted by the Railroad Company with the Trustees and the respective holders from time to time of bonds hereby secured as follows, namely:

* * *

ARTICLE EIGHT

REMEDIES OF THE TRUSTEES AND BONDHOLDERS

* * *

SECTION 2. If one or more of the following events, herein called the events of default, shall happen, that is to say:

(a) In case default shall be made in the payment of any instalment of interest on any of the bonds hereby secured when and as the same shall become payable, as therein and herein expressed, and such default shall continue for a period of three months; or

(b) In case default shall be made in the payment of the principal of any of the bonds hereby secured when and as the same shall become due and payable either by the terms thereof or otherwise as herein provided; or

(c) In case default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Railroad Company in the bonds hereby secured or in this indenture or any indenture supplemental hereto contained, and such default shall continue for a period of three months after written notice specifying such default and requiring the same to be remedied shall have been given to the Railroad Company by the Corporate Trustee, which notice may be given by the Corporate Trustee in its discretion and shall be given on the written request of the holders of five per cent. in amount of the bonds hereby secured at the time outstanding; or

(d) In case an order shall be made for the appointment of a receiver of the Railroad Company or of the trust estate or of any part thereof; or

(e) In case default shall be made in the payment of the interest on any bond or obligation (except bonds of the four issues last described in Article Twelfth of the granting clauses hereof) outstanding and secured by any lien prior to that of this indenture on the trust estate, or any part thereof, or upon property a leasehold interest in which shall be subject to the lien of this indenture, or in case default shall be made in the payment of the interest on any outstanding bond or obligation of or secured by lien upon the property of any company of which ninety per cent. or more of the

capital stock shall be pledged or assigned hereunder; and any of such defaults shall continue for thirty days; or the Railroad Company shall fail, on the maturity, whether by declaration or otherwise, of any such bonds or obligations (except as aforesaid), and on presentation thereof in accordance with the terms thereof, either to pay said bonds or obligations or to cause said bonds or obligations to be taken up and delivered to the Trustees to be held under this indenture, or, if so required by the terms of any indenture constituting a prior lien upon any part of the trust estate, to be delivered to the trustee or trustees thereunder, and in such case to be assigned to the Trustees hereunder; or default shall be made in the performance of any covenant contained in any mortgage or deed or other instrument of trust securing any such bond or obligation, or constituting a lien on any part of the trust estate in priority to this indenture or upon property a leasehold interest in which shall be subject to the lien of this indenture; and, by reason of any of such defaults, any right of entry or right of action for the enforcement of the security afforded thereby shall accrue;

* * *

then, and in each and every such case, in the discretion of the Corporate Trustee, the Trustees, or either of them, personally or by their agents or attorneys, may enter into and upon all or any part of the railroads, property and premises, lands, rights, interests and franchises hereby conveyed, and each and every part thereof, and may exclude the Railroad Company, its agents and servants, wholly therefrom, and having and holding the same may use, operate, manage and control said railroads and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by their superintendents, managers, receivers, agents and servants or attorneys, to the best advantage of the

holders of the bonds hereby secured; and upon every such entry the Trustees, at the expense of the trust estate, from time to time, either by purchase, repair or construction may maintain and restore, and may insure and keep insured, the property, buildings, bridges and structures erected or provided for use in connection with said railroads and other premises, and whereof they shall become possessed as aforesaid, in the same manner and to the same extent as is usual with railroad companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to them may seem judicious; and, in such case, the Trustees shall have the right to manage the trust estate and to carry on the business and exercise all rights and powers of the Railroad Company, either in the name of the Railroad Company or otherwise, as the Trustees shall deem best; and they shall be entitled to collect and to receive all tolls, earnings, income, rents, issues and profits of the same and every part thereof; and after deducting the expenses of operating said railroads and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said premises and property or any part thereof, as well as just and reasonable compensation for their services, and for all attorneys, counsel, agents, clerks, servants and other employees by them properly engaged and employed, they shall apply the moneys arising as aforesaid as follows:

(1) In case the principal of none of the bonds hereby secured shall have become due and be unpaid to the payment of the interest in default, in the order of the maturity of the instalments of such interest,

with interest thereon at the same rates as are borne by the bonds respectively upon which such interest shall be in default; such payments to be made ratably to the persons entitled thereto, without discrimination or preference; and

(2) In case the principal of any of the bonds hereby secured shall have become due, by declaration or otherwise, and shall be unpaid, *first* to the payment of the accrued interest (with interest on the overdue instalments thereof at the same rates as are borne by the bonds respectively upon which such interest shall be in default) in the order of the maturity of the instalments of such interest, and *then* to the payment of the principal of all bonds hereby secured, whether due or not; such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

These provisions, however, are not intended in any wise to modify the provisions of Section 1 of this Article Eight, but are subject thereto.

* * *

SECTION 5. If one or more of the events of default described in Section 2 of this Article Eight shall happen, and shall be continuing, the Trustees, with or without entry, personally or by attorney, in the discretion of the Corporate Trustee, either

(a) may sell, subject to the then existing prior liens thereon, to the highest bidder, all and singular the trust estate, including bonds and stocks, rights, franchises and interests and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof; which sale or sales shall be made at public auction at such place in the City of St. Louis, in the State of Missouri, or at such other place, and at such time and upon such terms, as the Corporate Trus-

tee may fix and briefly specify in the notice of sale to be given as herein provided; or

(b) may proceed to protect and enforce their rights and the rights of the holders of the bonds secured by this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Corporate Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of their rights or duties hereunder.

Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any default made and continued as aforesaid, it shall be the duty of the Trustees, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Corporate Trustee, being advised by counsel, shall deem most expedient in the interest of the holders of the bonds hereby secured.

In case default shall be made in the payment of the principal or interest of some, but not all, of the bonds outstanding hereunder, then whatever action it is in this Article Eight provided may or shall be taken by or upon the request of the holders of a specified percentage of bonds outstanding, may or shall also be taken by or upon request of the holders of the same percentage of the outstanding bonds of all series upon bonds of which any such default shall have occurred.

* * *

SECTION 17. In case an event of default shall have happened and a bill of equity shall be filed or any other judi-

cial proceedings commenced to enforce any right of the Trustees or of the bondholders under this indenture, then the Trustees shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustees upon the occurrence and continuance of default as hereinbefore provided, and as matter of right the Trustees shall be entitled to the appointment of a receiver of the trust estate and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the court making such appointment shall confer; *provided,* however, that notwithstanding the appointment of any such receiver, the Corporate Trustee shall be entitled to retain possession and control of any bonds, cash and other property deposited with the Corporate Trustee hereunder.

SECTION 18. In case the Railroad Company shall make default in any of the respects mentioned in Section 2 of this Article Eight, and (1) at any time during the continuance of such default there shall be any existing judgment against the Railroad Company unsatisfied and unsecured by bond on appeal or (2) in any judicial proceeding by any party other than the Trustees, a receiver shall be appointed of the Railroad Company or of its property, or a judgment or order be entered for the sequestration of its property; or if, in case of default in payment of interest specified in subdivisions (a) and (e) of said Section 2, the Railroad Company shall admit to the Trustees its inability to make good such default within the period of grace in said subdivisions mentioned; the Trustees, without waiting the period of grace, if any, in said section specified in respect of such default, shall thereupon be entitled, in the discretion of the Corporate Trustee, forthwith to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustees upon the occurrence and continuance of default as hereinbefore provided, and as a matter of right the Trustees shall thereupon be entitled, in the discretion of the Corporate Trustee, to the appointment of a receiver of the

trust estate, and of the earnings, income, revenue, rents, issues and profits thereof, with such powers as the court making such appointment shall confer; *provided*, however, that notwithstanding the appointment of any such receiver, the Corporate Trustee shall be entitled to retain possession and control of any bonds, cash and other property deposited with the Corporate Trustee hereunder and to receive and hold any property or money, and to retain control of any moneys deposited with other depositaries as herein provided.

* * *

SECTION 21. Except as herein expressly provided to the contrary no remedy herein conferred upon, or reserved to, the Trustees, or either of them, or the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

* * *

ARTICLE THIRTEEN

POSSESSION UNTIL DEFAULT—DEFEASANCE

SECTION 1. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds hereby secured at any time outstanding, or some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railroad Company, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, or until the Railroad Company shall have voluntarily surrendered possession to the Trustees as herein permitted, the Railroad Company, its successors and assigns shall be suffered and permitted to retain actual possession of all the railways and appurtenant property hereby mortgaged, and

to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits thereof.

The Railroad Company covenants and agrees that from such income, after payment of the operating and maintenance expenses of the trust estate, including taxes, and so far as such income shall not be applied to the payment of the interest maturing on other bonds or obligations secured by mortgage or other instrument prior in lien to this indenture upon the trust estate, the interest maturing upon the bonds hereby secured, shall first be paid, and such income, whether before or after the happening of any default, and whether the trust estate be held and operated by the Railroad Company or by the Trustees, under any power reserved under this indenture, or by a receiver or receivers appointed by any court at the instance of the Railroad Company or of the Trustees, or of any mortgagee, stockholder, or other person interested in the Railroad Company and having the right to apply for such appointment, shall be primarily pledged and applied, subject only as aforesaid, to the payment of the principal and interest of the bonds hereby secured.

General Mortgage

Missouri Pacific Railroad Company
dated April 2, 1917

(Extracts)

(Mortgage introduced in evidence, this Record, page 1190)

Indenture, dated the second day of April, 1917, between Missouri Pacific Railroad Company (hereinafter called the Railroad Company), party of the first part, and Bankers Trust Company (hereinafter called the Corporate Trustee) and Benjamin F. Edwards (hereinafter called the Individual Trustee)—the Corporate Trustee and the Individual Trustee being hereinafter collectively called the Trustees—parties of the second part.

* * *

Now therefore this indenture witnesseth that in order to secure the payment of the principal and interest of all the General Mortgage Bonds at any time issued and outstanding under this indenture according to their tenor and effect, and to secure the performance and observance of all the covenants and conditions herein and in the General Mortgage Bonds contained, and to declare the terms and conditions upon which the General Mortgage Bonds are to be issued and secured hereunder, and for and in consideration of the premises and of the acceptance or purchase of said bonds by the holders thereof, and of the sum of one hundred dollars, lawful money of the United States of America, to the Railroad Company duly paid by the Trustees at or before the ensealing and delivery of this indenture, the receipt whereof is hereby acknowledged, Missouri Pacific Railroad Company, the party of the first part, has executed and delivered this indenture, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, pledge

and set over, unto said BANKERS TRUST COMPANY and BENJAMIN F. EDWARDS, the parties of the second part, and unto their successors in the trust and their assigns forever:

(Description of Mortgaged Properties)

* * *

TOGETHER WITH all and singular the tenements and hereditaments belonging or in any wise appertaining to the railroads and other properties above described, or to any part thereof; and the reversion and reversions, remainder and remainders, tolls, income, rents, revenues, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Railroad Company, of, in and to the railroads and other properties above described, and every part and parcel thereof, whether now owned or hereafter acquired.

TO HAVE AND TO HOLD the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds hereby conveyed and assigned, or intended to be conveyed and assigned, unto the Trustees, their successor or successors and assigns forever;

Subject generally, however, to the lien of the Refunding Mortgage, and, as to the railroads, stocks, bonds, equipment, and other property and franchises now or hereafter affected thereby, to the several existing mortgages described in the recitals hereof, in so far but only in so far as the same by their terms or by the terms of existing indentures supplemental thereto attach to such railroads, stocks, bonds, equipment and other property and franchises as a lien prior to the lien hereof; and also, as to any other property and franchises hereafter acquired by the Railroad Company and becoming subject to the lien of this indenture, to any liens thereon existing at the time of such acquisition by the Railroad Company;

IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of all the present and future holders of the bonds and interest obligations issued and to be issued under this indenture, and for the enforcement of the payment of said bonds and obligations when payable, and the performance of and compliance with the covenants and conditions of this indenture, without preference, priority or distinction as to lien or otherwise of any one bond over any other bond by reason of priority in the issue or negotiation thereof or otherwise, so that each and every bond hereby secured shall have the same right, lien and privilege under this indenture, and subject to the terms hereof, be equally and proportionately secured hereby, as if all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this indenture, it being intended that the lien and security of this indenture shall take effect from the day of the execution and delivery hereof, without regard to the time of such actual issue, sale or disposition of said bonds, and as though upon said date all of said bonds had been actually issued, sold and delivered to and were in the hands of innocent holders thereof for value.

AND IT IS HEREBY COVENANTED AND DECLARED that all bonds to be issued hereunder, with the coupons for interest thereon, are to be issued, authenticated and delivered, and that the railroads, property, stocks and bonds at any time mortgaged, pledged or assigned to the Trustees hereunder (which are hereinafter sometimes called collectively the trust estate) are to be held by the Trustees, subject to the further covenants, conditions, uses and trusts hereinafter set forth; and it is agreed and covenanted by the Railroad Company with the Trustees and the respective holders from time to time of bonds hereby secured as follows, namely:

* * *

ARTICLE SIX

Remedies of the Trustees and Bondholders

* * *

Section 2. If one or more of the following events, herein called the events of default, shall happen, that is to say:

(a) In case default shall be made in the payment of any instalment of interest on any of the bonds hereby secured when and as the same shall become payable, as therein and herein expressed, and such default shall continue for a period of three months; or

(b) In case default shall be made in the payment of the principal of any of the bonds hereby secured when the same shall become due and payable either by the terms thereof or otherwise as herein provided; or

(c) In case default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Railroad Company in the bonds hereby secured or in this indenture or any indenture supplemental hereto contained, and such default shall continue for a period of three months after written notice specifying such default and requiring the same to be remedied shall have been given to the Railroad Company by the Corporate Trustee, which notice may be given by the Corporate Trustee in its discretion and shall be given on the written request of the holders of five per cent. in amount of the bonds hereby secured at the time outstanding; or

(d) In case an order shall be made for the appointment of a receiver of the Railroad Company or of the trust estate or of any part thereof; or

(e) In case default shall be made in the payment of the interest on any bond or obligation (except bonds of the four issues last described in Article Twelfth of the granting clauses hereof) outstanding and secured

by any lien prior to that of this indenture on the trust estate, or any part thereof, or upon property a leasehold interest in which shall be subject to the lien of this indenture, or in case default shall be made in the payment of the interest on any outstanding bond or obligation of or secured by lien upon the property of any company of which ninety per cent. or more of the capital stock shall be pledged or assigned hereunder; and any of such defaults shall continue for thirty days; or the Railroad Company shall fail, on the maturity, whether by declaration or otherwise, of any such bonds or obligations (except as aforesaid), and on presentation thereof in accordance with the terms thereof, either to pay said bonds or obligations or to cause said bonds or obligations to be taken up and delivered to the Trustees to be held under this indenture, or, if so required by the terms of any indenture constituting a prior lien upon any part of the trust estate, to be delivered to the trustee or trustees thereunder, and in such case to be assigned to the Trustees hereunder; or default shall be made in the performance of any covenant contained in any mortgage or deed or other instrument of trust securing any such bond or obligation, or constituting a lien on any part of the trust estate in priority to this indenture or upon property a leasehold interest in which shall be subject to the lien of this indenture; and, by reason of any of such defaults, any right of entry or right of action for the enforcement of the security afforded thereby shall accrue;

* * *

then, and in each and every such case, in the discretion of the Corporate Trustee, the Trustees, or either of them, personally or by their agents or attorneys, may enter into and upon all or any part of the railroads, property and premises, lands, rights, interests and franchises hereby conveyed, and each and every part thereof, and may exclude the Railroad Company, its agents and servants, wholly therefrom, and having and

holding the same may use, operate, manage and control said railroads and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by their superintendents, managers, receivers, agents and servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry the Trustees, at the expense of the trust estate, from time to time, either by purchase, repair or construction may maintain and restore, and may insure and keep insured, the property, buildings, bridges and structures erected or provided for use in connection with said railroads and other premises, and whereof they shall become possessed as aforesaid, in the same manner and to the same extent as is usual with railroad companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to them may seem judicious; and, in such case, the Trustees shall have the right to manage the trust estate and to carry on the business and exercise all rights and powers of the Railroad Company, either in the name of the Railroad Company or otherwise, as the Trustees shall deem best; and they shall be entitled to collect and to receive all tolls, earnings, income, rents, issues and profits of the same and every part thereof; and after deducting the expenses of operating said railroads and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said premises and property or any part thereof, as well as just and reasonable compensation for their services, and for all attorneys, counsel, agents, clerks, servants and other employees by them properly engaged and

employed, they shall apply the moneys arising as aforesaid as follows:

(1) In case the principal of none of the bonds secured hereby shall have become due and be unpaid, to the payment of the interest in default, in the order of the maturity of the instalments of such interest, with interest thereon at the rate of four per cent. per annum; such payments to be made ratably to the persons entitled thereto, without discrimination or preference; and

(2) In case the principal of the bonds secured hereby shall have become due, by declaration or otherwise, and shall be unpaid, *first* to the payment of the accrued interest (with interest on the overdue instalments thereof at the rate of four per cent. per annum) in the order of the maturity of the instalments of such interest, and *then* to the payment of the principal of all bonds secured hereby; such payments to be made ratably to the persons entitled thereto, without any discrimination or preference.

These provisions, however, are not intended in any wise to modify the provisions of Section 1 of this Article Six, but are subject thereto.

* * *

SECTION 5. If one or more of the events of default described in Section 2 of this Article Six shall happen, and shall be continuing, the Trustees, with or without entry, personally or by attorney, in the discretion of the Corporate Trustee, either

(a) may sell, subject to the then existing prior liens thereon, to the highest bidder, all and singular the trust estate, including bonds and stocks, rights, franchises and interests and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right

of redemption thereof; which sale or sales shall be made at public auction at such place in the City of St. Louis, in the State of Missouri, or at such other place, and at such time and upon such terms, as the Corporate Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or

(b) may proceed to protect and enforce their rights and the rights of the holders of the bonds secured by this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Corporate Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of their rights or duties hereunder.

Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any default made and continued as aforesaid, it shall be the duty of the Trustees, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Corporate Trustee, being advised by counsel, shall deem most expedient in the interest of the holders of the bonds hereby secured.

* * *

SECTION 17. In case an event of default shall have happened and a bill of equity shall be filed or any other judicial proceedings commenced to enforce any right of the Trustees or of the bondholders under this indenture, then the Trustees shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the

Trustees upon the occurrence and continuance of default as hereinbefore provided, and as matter of right the Trustees shall be entitled to the appointment of a receiver of the trust estate and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the court making such appointment shall confer; *provided,* however, that notwithstanding the appointment of any such receiver, the Corporate Trustee shall be entitled to retain possession and control of any bonds, cash and other property deposited with the Corporate Trustee hereunder.

SECTION 18. In case the Railroad Company shall make default in any of the respects mentioned in Section 2 of this Article Six, and (1) at any time during the continuance of such default there shall be any existing judgment against the Railroad Company unsatisfied and unsecured by bond on appeal or (2) in any judicial proceeding by any party other than the Trustees, a receiver shall be appointed of the Railroad Company or of its property, or a judgment or order be entered for the sequestration of its property; or if, in case of default in payment of interest specified in subdivisions (a) and (e) of said Section 2, the Railroad Company shall admit to the Trustees its inability to make good such default within the period of grace in said subdivisions mentioned; the Trustees, without waiting the period of grace, if any, in said section specified in respect of such default, shall thereupon be entitled, in the discretion of the Corporate Trustee, forthwith to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustees upon the occurrence and continuance of default as hereinbefore provided, and as a matter of right the Trustees shall thereupon be entitled, in the discretion of the Corporate Trustee, to the appointment of a receiver of the trust estate, and of the earnings, income, revenue, rents, issues and profits thereof, with such powers as the court making such appointment shall confer; *provided,* however, that notwithstanding the appointment of any such receiver, the Corporate Trustee shall be entitled to retain

possession and control of any bonds, cash and other property deposited with the Corporate Trustee hereunder and to receive and hold any property or money, and to retain control of any moneys deposited with other depositaries as herein provided.

* * *

SECTION 21. Except as herein expressly provided to the contrary no remedy herein conferred upon, or reserved to, the Trustees, or either of them, or the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

* * *

ARTICLE ELEVEN

POSSESSION UNTIL DEFAULT—DEFEASANCE

SECTION 1. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds hereby secured at any time outstanding, or some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railroad Company, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, or until the Railroad Company shall have voluntarily surrendered possession to the Trustees as herein permitted, the Railroad Company, its successors and assigns shall be suffered and permitted to retain actual possession of all the railways and appurtenant property hereby mortgaged, and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits thereof.

The Railroad Company covenants and agrees that from such income, after payment of the operating and maintenance expenses of the trust estate, including taxes, and so far as such income shall not be applied to the payment of the interest maturing on other bonds or obligations secured by mortgage or other instrument prior in lien to this indenture upon the trust estate, the interest maturing upon the bonds hereby secured, shall first be paid, and such income, whether before or after the happening of any default, and whether the trust estate be held and operated by the Railroad Company or by the Trustees, under any power reserved under this indenture, or by a receiver or receivers appointed by any court at the instance of the Railroad Company or of the Trustees, or of any mortgagee, stockholder, or other person interested in the Railroad Company and having the right to apply for such appointment, shall be primarily pledged and applied, subject only as aforesaid, to the payment of the principal and interest of the bonds hereby secured.

Petition (No. 44) of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under First and Refunding Mortgage of Missouri Pacific Railroad Company, seeking sequestration, etc.

(Introduced in evidence, this Record, page 1190)

To the Honorable the Judges of the District Court of the United States for the Eastern Division, Eastern Judicial District of Missouri:

The petition of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, respectfully shows as follows:

1. The petitioner, Guaranty Trust Company of New York (hereinafter sometimes called the "Corporate Trustee"), is, and at all of the times wherein it is hereinafter mentioned was, a corporation duly organized and existing under the laws of the State of New York, and a citizen of said State, and a resident and inhabitant of the City, County and State of New York, and of the Southern District of New York, and as such corporation is, and at all of the times wherein it is hereinafter mentioned was, duly authorized and empowered to hold in trust the property conveyed, transferred and assigned to it upon the trusts hereinafter stated, and to execute and perform the trusts reposed in it under and by virtue of the mortgage or deed of trust and supplements thereto hereinafter described and collectively called the First and Refunding Mortgage.

2. The petitioner, Benjamin F. Edwards, is, and at all of the times wherein he is hereinafter mentioned was, a citizen of the State of Missouri, and a resident and inhabitant of the City and County of St. Louis, State of Missouri, and of the Eastern District of Missouri.

3. The debtor, Missouri Pacific Railroad Company (hereinafter called the "Railroad Company"), is a corporation duly organized and existing under the laws of the State of Missouri, and a citizen and resident of said State, and owns or leases and, prior to the filing of its petition in this Court under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, as hereinafter shown, operated lines of railroad continuous and connecting and forming a complete railroad system lying within the States of Missouri, Kansas, Colorado, Oklahoma, Arkansas, Louisiana, Nebraska, Tennessee and Illinois, a substantial and material part whereof is within the Eastern District of Missouri, Eastern Division, and its principal operating and general offices are in the City of St. Louis, Missouri, within the Eastern District of Missouri, Eastern Division.

4. On or about May 18, 1917, the Railroad Company, desiring to provide for funding and consolidating the indebtedness secured by mortgages, trusts and liens on certain of the railroads, equipment and property of the Railroad Company and to provide for making additions to, and extensions and betterments of, its railroads and other property and for the purchase of additional equipment and property and, for such and other corporate purposes, to borrow money, in pursuance of resolutions of its Board of Directors adopted by the affirmative vote of more than two-thirds of the entire Board, and of resolutions of the holders of its entire capital stock outstanding, at meetings duly called and held in accordance with law, and with the by-laws of the Railroad Company, determined to increase its bonded indebtedness by the creation and issue of its bonds, limited, except as otherwise provided in the First and Refunding Mortgage, to an aggregate principal amount at any one time outstanding of Four hundred and fifty million dollars ($450,000,000), to be known as its First and Refunding Mortgage Bonds (hereinafter sometimes called the "First and Refunding Bonds"); such bonds to be issued in series, to bear such date or dates and have such maturity or maturities, to bear interest at such rate or rates not exceeding

six per cent. per annum, payable semi-annually or quarterly on such date or dates, as might from time to time be fixed by the Board of Directors and expressed in the bonds respectively; and to be secured by a mortgage or deed of trust on the lines of railroad, property and franchises therein described or embraced thereunder; and in order to secure the payment of the principal and interest of all the First and Refunding Bonds at any time issued and outstanding under the First and Refunding Mortgage according to their tenor and effect and to secure the performance and observance of all the covenants and conditions therein and in the First and Refunding Mortgage contained, and to declare the terms and conditions upon which the First and Refunding Bonds were to be issued and secured thereunder, duly made, and on or about May 18, 1917, executed under its corporate seal and delivered to the petitioners, as Trustees, a mortgage or deed of trust, dated April 2, 1917, and known as its First and Refunding Mortgage, a copy of which is hereto annexed, marked Schedule A and made a part hereof, wherein and whereby the Railroad Company granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred pledged and set over, subject to the priority of lien of the several mortgages upon separate portions of its lines of railway and other property in the First and Refunding Mortgage mentioned, unto Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees, and unto their successors in the trust and their assigns forever, all and singular the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds described in the granting clauses of the First and Refunding Mortgage, as follows (the Railroad Company therein referred to is the debtor, and the Indenture therein mentioned is the First and Refunding Mortgage and the Bonds therein referred to are the First and Refunding Bonds) viz.:

(Description of property covered by the Mortgage not here printed.)

5. All the above described premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds were in and by the First and Refunding Mortgage granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged and set over unto the petitioners, Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees, to have and to hold the same unto them, their successor or successors and assigns forever, in trust, for the equal and proportionate benefit and security of all present and future holders of the First and Refunding Bonds and interest obligations issued and to be issued under the First and Refunding Mortgage, and for the enforcement of the payment of the First and Refunding Bonds and obligations when payable, and the performance of and compliance with the covenants and conditions of the First and Refunding Mortgage, without preference, priority or distinction as to lien, or otherwise, of any one bond over any other bond by reason of priority in the issue or negotiation thereof, or otherwise, so that each and every bond secured by the First and Refunding Mortgage should have the same right, lien and privilege thereunder, and, subject to the terms thereof, be equally and proportionately secured thereby, as if all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of the First and Refunding Mortgage, it being intended that the lien and security of the First and Refunding Mortgage should take effect from the day of the execution and delivery thereof, without regard to the time of such actual issue, sale or disposition of First and Refunding Mortgage Bonds, and as though upon said date all of the First and Refunding Mortgage Bonds had been actually issued, sold and delivered to and were in the hands of innocent holders thereof for value.

6. In and by the granting clauses of the First and Refunding Mortgage there were granted, bargained, sold, conveyed and confirmed unto the petitioners as Trustees,

among other things, the "tolls, income, rents, revenues, issues and profits" of the mortgaged property.

7. The petitioners, Guaranty Trust Company of New York and Benjamin F. Edwards, duly accepted the trusts created by the First and Refunding Mortgage and united in the execution of the same to evidence such acceptance.

8. The petitioners are informed and believe and therefore allege that since the date of the execution and delivery of the First and Refunding Mortgage, the Railroad Company has from time to time acquired certain other property, real and personal, rights and interests (the exact character, description and extent of which are at present unknown to the petitioners), which has become subject to the lien of the First and Refunding Mortgage, and among which property, rights and interests are certain bonds, notes, stocks and other securities specifically set forth and described in Schedule B attached hereto and made a part hereof with the same force and effect as if herein set forth at length, and also the property specifically conveyed to your petitioners, as Trustees, by several supplemental indentures, which said supplemental indentures and property are described in Schedule C (1 to 20 inclusive) hereto attached and made a part hereof with the same force and effect as if herein set forth at length, and that for the proper protection and enforcement of the rights of the Trustees and of the holders of First and Refunding Mortgage bonds and interest obligations, it is necessary for the Railroad Company to account to petitioners in this proceeding for all property, rights and interests owned by the Railroad Company at the date of the execution and delivery of the First and Refunding Mortgage, and for all property rights and interests subsequently acquired by the Railroad Company, and for certain property released from the lien of said mortgage, and to exhibit in this proceeding a full and true description thereof, in order that the said property, rights and interests or so much thereof as is subject to the lien

of the First and Refunding Mortgage, may be so declared and decreed by this Honorable Court.

9. The petitioners are informed and believe and therefore allege that subsequent to the execution and delivery of the First and Refunding Mortgage, the same was duly recorded in each county in which the lines of railroad and other property of the Railroad Company covered by the First and Refunding Mortgage were and are situated or located, and elsewhere as required by law, and that the said supplements to the First and Refunding Mortgage likewise were duly recorded respectively in the counties in which the property covered by each of said supplements were and are situated or located.

10. The First and Refunding Mortgage and the said supplements thereto were and are the proper act and deed of the Railroad Company, and were by it authorized, made and delivered in all respects in conformity with law, and the same were and are valid conveyances for the purposes therein stated and now constitute valid and subsisting liens upon all the property therein mentioned and set forth and covered by or embraced in or under the First and Refunding Mortgage and supplements thereto, or intended so to be, or which has become subject to the lien of the First and Refunding Mortgage and supplements thereto, and the petitioners are advised and charge that the lien of the First and Refunding Mortgage covers and extends to all of the premises and properties mentioned and described in said supplemental indentures (Schedule C 1-20), or thereby conveyed and transferred, or intended so to be.

11. By Article Two of the First and Refunding Mortgage it is, among other things, provided that the First and Refunding Mortgage Bonds should be executed by the Railroad Company and delivered by it for authentication to the Corporate Trustee, and that thereupon, as provided therein, the Corporate Trustee should authenticate and deliver the same. From time to time the petitioner Guaranty Trust

Company of New York, the Corporate Trustee, in conformity with the provisions of the First and Refunding Mortgage has duly authenticated Thirty Five Million Four Hundred and Fifty Seven Thousand Dollars ($35,457,000) principal amount of Series A 5% First and Refunding Bonds, Thirteen Million Six Hundred Forty One Thousand Dollars ($13,641,000) principal amount of Series B 5% First and Refunding Bonds, Nine Million Forty Four Thousand Dollars ($9,044,000) principal amount of Series C 5% First and Refunding Bonds, Sixty Million Three Hundred Seventy Three Thousand Five Hundred Dollars ($60,373,500) principal amount of Series D 6% First and Refunding Bonds, Thirty Million Seven Hundred One Thousand Five Hundred Dollars ($30,701,500) principal amount of Series E 6% First and Refunding Bonds, One Hundred Fifteen Million One Hundred Twenty One Thousand Dollars ($115,121,000) principal amount of Series F 5% First and Refunding Bonds, Forty Four Million Two Hundred Fifty Thousand Dollars ($44,250,000) principal amount of Series G 5% First and Refunding Bonds, Twenty Five Million Dollars ($25,000,000) principal amount of Series H 5% First and Refunding Bonds and One Hundred One Million Two Hundred Thousand Dollars ($101,200,000) principal amount of Series I 5% First and Refunding Bonds, all of which Bonds had been theretofore duly executed by the Railroad Company pursuant to authority of law and due corporate action, and thereupon each and all of said Bonds were duly delivered to the Railroad Company or upon its order pursuant to the terms of said mortgage.

Seventeen Million Six Hundred Sixteen Thousand Five Hundred Dollars ($17,616,500) principal amount of Series A 5% First and Refunding Bonds, Thirteen Million Six Hundred Forty One Thousand Dollars ($13,641,000) principal amount of Series B 5% First and Refunding Bonds, Nine Million Forty Thousand Dollars ($9,040,000) principal amount of Series C 5% First and Refunding Bonds, Sixty Million Three Hundred Seventy Two Thousand Five Hundred Dollars ($60,372,500) principal amount of Series D 6% First and Refunding Bonds and Thirty Million Seven Hun-

dred One Thousand Five Hundred Dollars ($30,701,500) principal amount of Series E 6% First and Refunding Bonds, Twenty Million One Hundred Twenty One Thousand Dollars ($20,121,000) principal amount of Series F 5% First and Refunding Bonds and Nineteen Million Two Hundred Fifty Thousand Dollars ($19,250,000) principal amount of Series G 5% First and Refunding Bonds have been cancelled in accordance with the provisions of the First and Refunding Mortgage, and as petitioners are informed and believe, Forty Million Dollars ($40,000,000) principal amount of Series I 5% First and Refunding Bonds, a part of the One Hundred One Million Two Hundred Thousand Dollars ($101,200,000) referred to heretofore, in the aggregate are pledged to secure advances from the Reconstruction Finance Corporation and others.

Your petitioners are informed and believe and therefore allege that the balance of all the First and Refunding Bonds which have been issued and which have not heretofore been cancelled is $264,045,500 principal amount, consisting of Bonds of the following Series:

$ 17,840,500	principal	amount	of	Series	A 5%	First	and	Refunding	Bonds
4,000	"	"	"	"	C 5%	"	"	"	"
1,000	"	"	"	"	D 6%	"	"	"	"
95,000,000	"	"	"	"	F 5%	"	"	"	"
25,000,000	"	"	"	"	G 5%	"	"	"	"
25,000,000	"	"	"	"	H 5%	"	"	"	"
101,200,000	"	"	"	"	I 5%	"	"	"	"

all of which Bonds are lawfully created, valid and existing obligations of the Railroad Company and entitled to the lien and security of the First and Refunding Mortgage, and with the exception of Forty Million Dollars ($40,000,000) principal amount of Series I 5% First and Refunding Bonds pledged to secure advances from the Reconstruction Finance Corporation and others as aforesaid, are in the hands of numerous bona fide holders for value.

12. The First and Refunding Mortgage of the Railroad Company (Schedule A hereto annexed), in and by Article Eight thereof, provides, among other things, as follows

(the Railroad Company therein referred to is the Missouri Pacific Railroad Company and the debtor herein; the Indenture therein referred to is the First and Refunding Mortgage; the bonds and interest obligations therein referred to are the First and Refunding Bonds and coupons respectively; and the Trustees therein referred to are the Trustees under the First and Refunding Mortgage and the petitioners herein):

(Text of Article Eight, Sections 2, 5, 17, 18 and 21 of the Missouri Pacific Railroad Company First and Refunding Mortgage, dated April 2, 1917, set forth in Petition is not here printed. For text of these provisions see this volume, supra, at pages 315 to 322.)

13. Your petitioners are informed and believe and therefore allege that heretofore and on or about March 31, 1933, the Railroad Company filed in this Court its petition as debtor under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, which petition represented, among other things, that the petitioner was duly organized and existing under the laws of the State of Missouri, and a common carrier by railroad engaged in the transportation of persons and property in interstate commerce, in the states of Missouri, Arkansas, Colorado, Illinois, Kansas, Louisiana and Oklahoma; that there would become due on April 1, 1933, and within thirty days thereafter, certain sums aggregating $40,589,330.78 for principal and interest on its obligations or obligations constituting a lien on its property and for taxes; that the Debtor was without funds to pay and discharge the aforesaid obligations as they matured, and alleged, on information and belief, that it had no means of borrowing or otherwise procuring such funds and was unable to meet its debts as they matured and desired to effect a plan of reorganization pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy; that on the date of the filing of the petition a copy thereof was being filed with the Interstate Commerce Commission, and that the filing of the petition was duly

authorized by the Debtor by resolution of the Executive Committee of the Board of Directors of the Debtor, adopted at a meeting thereof duly held on the 31st day of March, 1933. The said petition prayed, among other things, that an order might be entered approving said petition as properly filed under Section 77, and that there might be granted to the Railroad Company all other and further relief to which it might be entitled.

14. The petitioners are informed and believe and therefore allege, that upon the filing of said petition by the Railroad Company and on or about March 31, 1933, an order was made and entered by this Court, which order, among other things, directed that the petition be approved as properly filed under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and authorized the Railroad Company, pending further order of this Court, among other things, to run, manage, maintain, operate and keep in proper condition and repair the railroads and property of the Railroad Company, wherever situated, whether in Missouri, or the Eighth Judicial Circuit, or elsewhere, and to manage and conduct its business as a railroad company, all according to law and subject to such supervision and control by the Court as the Court might exercise by its further orders entered herein.

15. The petitioners pray leave to refer to the said petition of the Railroad Company, and to the said order entered thereon, or to duly certified copies thereof when the same shall be produced upon the final hearing, or upon any hearing in this proceeding, with the same force and effect as if the said petition and order were herein set forth at length.

16. The petitioners are informed and believe and therefore allege that the Railroad Company, subsequent to the entry of the aforesaid order by this Court, has operated its lines of railroad, properties and premises of every kind and description, including the properties subject to the lien of the First and Refunding Mortgage and the supplements

thereto (other than certain securities in the possession of Guaranty Trust Company of New York, as Corporate Trustee), subject to the supervision and control of this Court pursuant to said order and the further orders entered herein and to the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, by reason whereof the petitioners are unable, save as herein sought, to take possession thereof and to administer their trust as in the First and Refunding Mortgage it is provided should be done in the event of a default as herein specified.

17. The petitioners are informed and believe and therefore allege, that events of default under the First and Refunding Mortgage have occurred in that (a) the Railroad Company has failed, on the maturity on May 1, 1933, of the $34,548,000 principal amount of St. Louis, Iron Mountain and Southern Railway Company River and Gulf Divisions First Mortgage Four Per Cent. Thirty Year Gold Bonds secured by its First Mortgage dated May 1, 1903, constituting a lien prior to that of the First and Refunding Mortgage on a part of the property secured by such First and Refunding Mortgage, to pay the same or to cause the same to be taken up and delivered to your petitioners, as Trustees, or to be delivered to the trustee or trustees of any indenture constituting a prior lien, and (b) the Railroad Company has defaulted in the payment of the interest due April 1, 1933, upon all the First Mortgage 4½% Gold Bonds issued and outstanding and secured by the First Mortgage of Pacific Railroad of Missouri (Carondelet Branch), and that such default in the payment of interest has continued for a period of thirty (30) days from April 1, 1933, and such defaults still continue.

18. The petitioners are informed and believe and therefore allege that by reason of the defaults mentioned in the foregoing paragraph 17 they are entitled, under the terms of the First and Refunding Mortgage, to exercise the right of entry therein conferred and to proceed to protect and enforce their rights and the rights of the holders of the

First and Refunding Bonds in the manner described in the First and Refunding Mortgage and are entitled to collect and to receive all tolls, earnings, income, rents, issues and profits of the mortgaged premises, and to apply the same as provided in the First and Refunding Mortgage, and generally to exercise any and all rights and powers in and by the First and Refunding Mortgage conferred and provided to be exercised by the Trustees, or either of them, thereunder, upon the occurrence and continuance of any default as in the First and Refunding Mortgage provided.

19. The petitioners are informed and believe and therefore allege that default has been made by the Railroad Company in the payment of the instalment of interest which became due an April 1, 1933, upon all of the Series H 5% First and Refunding Bonds issued and outstanding and secured by the First and Refunding Mortgage and that such default still continues.

The petitioners are informed and believe and therefore allege that default has likewise been made by the Railroad Company in the payment of the instalment of interest which became due on May 1, 1933, upon all of the Series G 5% First and Refunding Bonds issued and outstanding and secured by the First and Refunding Mortgage and that such default still continues.

20. The petitioners are informed and believe and therefore allege that various mortgages exist upon the properties of the Railroad Company, including the First and Refunding Mortgage as aforesaid; that the liens and provisions of the said mortgages differ among themselves and the aggregate of the outstanding bonds secured by them respectively is very great, amounting to many millions of dollars; that some of said mortgages purport, or may be claimed, to constitute liens upon the property covered by the lien of the First and Refunding Mortgage, or some portions thereof, partly superior and partly inferior to the First and Refunding Mortgage lien, but that the amount and extent of such liens, if any, is unknown to your petitioners.

21. The petitioners are informed and believe and therefore allege, that the income and revenues of the Railroad Company are and will be wholly insufficient to pay and discharge the indebtedness of the Railroad Company now due and owing by it, and that the Railroad Company has insufficient resources with which to provide for the payment of its obligations as they mature.

22. The petitioners are informed and believe and therefore allege that the said railroad property, premises and franchises covered by and embraced in and under the First and Refunding Mortgage and the supplements thereto constitute one single property, consisting of a railroad and its appurtenances, and should be conducted as a single enterprise.

23. No proceedings have been had at law or in equity for the protection and enforcement of the rights of the petitioners as such Trustees, and the rights of the holders of the First and Refunding Bonds or for the foreclosure of the First and Refunding Mortgage or for the collection or enforcement of the said mortgage debt, or any part thereof, save only this proceeding, and that petitioners have no adequate relief at law, and the relief to which they are entitled can only be granted by this Court.

24. The petitioners are informed and believe and therefore allege, that the Railroad Company owns or leases and operates lines of railroad, substantially all continuous and connecting and forming a complete railroad system, lying within the States of Missouri, Kansas, Colorado, Oklahoma, Arkansas, Louisiana, Nebraska, Tennessee and Illinois, aggregating in length of first main track about 7,450.59 miles; the Railroad Company owns and leases certain rolling stock and equipment and owns other property, real and personal, as well as rights, privileges and franchises, appertaining to, or used in connection with, its lines of railroad and business, and certain bonds, stocks and other securities; that pursuant to the order of this court entered March 31,

1933, the Railroad Company now retains and claims possession of a large amount of rolling stock and equipment and other personal property which is pledged under and covered by the First and Refunding Mortgage, and which, or an interest in which, is claimed by the petitioners as Trustees as aforesaid, which petitioners cannot, without the accounting hereinafter prayed, more particularly and fully describe; that pursuant to the order of this court entered March 31, 1933, said Railroad Company also holds and retains and claims title to certain of the tolls, income, rents, revenues, issues and profits thereof which are also subject to and covered by the petitioners' said mortgage lien, and are likewise claimed by them as Trustees as aforesaid. The petitioners are advised and therefore aver that by reason of the premises and of the matters hereinbefore in this petition alleged, and of the defaults hereinbefore in this petition alleged, as well as by reason of the impairment of and danger and injury to the security of their said mortgage lien hereinbefore alleged, and the further danger to the security of said mortgage lien by reason of the situation in this paragraph shown, the petitioners are entitled to file this petition and to have the relief herein prayed, and to have all such tolls, income, rents, revenues, issues and profits of the Railroad Company and every part thereof segregated and sequestered for the benefit of petitioners as such Trustees and of the holders of the First and Refunding Mortgage Bonds and interest obligations secured by their said mortgage lien; and the petitioners hereby demand that said tolls, income, rents, revenues, issues and profits be so segregated and sequestered as aforesaid, and be applied, subject only to such expenses and other uses as may legally and properly, having due regard to the rights of petitioners and the holders of the First and Refunding Mortgage Bonds, be incurred and made in the operation and preservation of the property, rights and franchises covered by petitioners' said mortgage lien, to and for the benefit of petitioners, as such Trustees, and of the holders of the First and Refunding Mortgage

Bonds and interest obligations, and to and for the proper protection of petitioners' said mortgage lien and the security thereof.

25. By reason of the premises the petitioners, as Trustees of the First and Refunding Mortgage, are unable adequately to execute their said trust in the manner specified and provided in and by the First and Refunding Mortgage without the aid and interposition of this Honorable Court, nor can their said trust be executed, as the petitioners are advised and charge, and the rights of all the parties in interest be ascertained and fully protected otherwise than by segregating and sequestering the tolls, income, rents, revenues, issues and profits of the Railroad Company and every part thereof.

Wherefore, the petitioners pray:

1. That the petitioners be permitted to intervene generally in the above entitled proceeding for the purpose of protecting their rights as Trustees under the First and Refunding Mortgage and the rights of the holders of the First and Refunding Bonds issued thereunder, and further and more specifically for the purposes of this petition.

2. That the First and Refunding Mortgage, dated April 2, 1917, and the supplements thereto, executed and delivered to the Trustees therein named, may be decreed to be valid and subsisting liens, upon all of the railroads and property, real and personal, rights, privileges and franchises in the First and Refunding Mortgage and said supplements described or thereby conveyed or transferred or intended so to be, or which have become subject thereto (save and except such property as may have been duly released from the lien thereof), and upon the tolls, income, rents, revenues, issues and profits of the Railroad Company and every part thereof, prior and superior to the interests or liens or claims of the debtor Missouri Pacific Railroad Company.

3. That the nature, extent and character of the said property and premises may be ascertained and determined; that an account be taken of all the railroads and property, real, personal and mixed, which belonged to the Railroad Company at the date of the First and Refunding Mortgage and of all the railroads, property, additions, extensions, improvements, renewals and replacements acquired by the Railroad Company since the date of the First and Refunding Mortgage.

4. That all tolls, income, rents, revenues, issues and profits of the mortgaged property and every part thereof, as shall come into the possession of the Railroad Company or of any trustee or trustees thereof appointed in this proceeding be impounded as of the date of the filing of this petition (without waiver of any claim of petitioners to tolls, income, rents, revenues, issues and profits, accruing prior to the filing of this petition) and segregated and sequestered by or under the direction of this Honorable Court for the benefit of petitioners, as Trustees, and of the holders of the First and Refunding Bonds and interest obligations secured by the said mortgage lien and be applied to and for their benefit, subject only to such expenses and other uses as may legally and properly be incurred in the operation and preservation of said property, having due regard for the rights of petitioners and holders of the First and Refunding Bonds and for the protection of the security of said mortgage lien, and that the rights of petitioners, as Trustees, and of the holders of the First and Refunding Bonds and interest obligations may be carefully and fully preserved.

5. That the debtor Railroad Company be required to make answer to all and singular the matters hereinbefore stated and charged, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide by and perform such orders, directions or decrees as shall be made herein and as to your Honors shall seem equitable and just.

6. That the petitioners may have such other and further relief in the premises as the nature and circumstances of this proceeding may require and as to this Honorable Court shall seem meet.

And the petitioners, as in duty bound, will ever pray.

GUARANTY TRUST COMPANY OF NEW YORK,
Corporate Trustee,

By M. P. CALLAWAY,
Vice-President.

(SEAL)

Dated June 7, 1933.

Attest:

M. KUHN,
Asst. Secretary.

BENJAMIN F. EDWARDS,
Individual Trustee.

DAVIS, POLK, WARDWELL, GARDINER & REED,
15 Broad Street,
New York, N. Y., and

NAGEL, KIRBY & SHEPLEY,
918 Security Building,
St. Louis, Missouri,
Solicitors for Petitioners.

DANIEL N. KIRBY,
ALLEN C. ORRICK,
EDWIN S. S. SUNDERLAND,
LEIGHTON H. COLEMAN,
Of Counsel.

UNITED STATES OF AMERICA,
STATE OF MISSOURI,
CITY OF ST. LOUIS, } ss.:

MERREL P. CALLAWAY, being duly sworn, deposes and says that he is an officer, to wit: a vice-president of Guaranty Trust Company of New York, one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein in respect of the acts of the Guaranty Trust Company of New York are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true; that the seal affixed to said petition is the corporate seal of the said petitioner and was so affixed by its authority.

MERREL P. CALLAWAY.

Subscribed and sworn to before me this 7th day of June, 1933.

A. ELLA KLOBASA,
Notary Public.

(SEAL)

My term ends August 27, 1933.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF MISSOURI, } ss.:
STATE OF MISSOURI,

BENJAMIN F. EDWARDS, being duly sworn, deposes and says that he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof; that the allegations contained therein in respect of the acts of this deponent are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true.

BENJAMIN F. EDWARDS.

Subscribed and sworn to before me this 7 day of June, 1933.

A. ELLA KLOBASA,
Notary Public.

(SEAL)

My term ends August 27, 1933.

Filed Jun. 7, 1933. Jas. J. O'Connor, Clerk.

Order (No. 44b) of the District Court entered on Petition (No. 44) of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under First and Refunding Mortgage of Missouri Pacific Railroad Company.

(Also printed at pages 309-313 of District Court Printed Record.)

This cause coming on further to be heard on this day upon the petition dated June 7, 1933, of Guaranty Trust Company of New York and Benjamin F. Edwards, as Trustees under the First and Refunding Mortgage of Missouri Pacific Railroad Company, dated April 2, 1917, and upon the answer thereto filed herein of Missouri Pacific Railroad Company, Debtor, and the Court having heard the arguments of counsel and being fully advised in the premises:

It Is Ordered, Adjudged and Decreed as follows:

1. That until further order of this Court, Missouri Pacific Railroad Company, Debtor, shall keep its books of account in such manner as to show all tolls, income, rents, revenues, issues and profits derived from the property of said Debtor which is subject to the lien of the First and Refunding Mortgage of said Debtor, dated April 2, 1917, which amount, for the purposes hereof, shall be determined as follows:

From the gross income of the Debtor there shall be deducted the following:

(a) All administrative and operating expenses of the Debtor (including taxes) according to the accounting practice prescribed by the rules and regulations of the Interstate Commerce Commission.

(b) All dividends, interest and other income from securities not pledged under said First and Refunding Mortgage.

(c) All interest payments on the following outstanding securities or other obligations of the Debtor or its predecessors in interest constituting a lien or charge against property owned by the Debtor, to wit:

First Mortgage Four Per Cent Gold Bonds of Pacific Railroad (of Missouri) (Extended), dated August 1, 1868—$6,996,000 outstanding.

Second Mortgage Five Per Cent Bonds of Pacific Railroad (of Missouri) (Extended), dated July 1, 1871—$2,573,000 outstanding.

First Mortgage Four and One-Half Per Cent Bonds of Pacific Railroad (of Missouri), Carondelet Branch (Extended), dated October 1, 1873—$237,500 outstanding.

Third Mortgage Four Per Cent Bonds of Missouri Pacific Railway Company (Extended), dated November 1, 1876—$3,828,000 outstanding.

First Mortgage Four Per Cent Bonds of Little Rock & Hot Springs Western Railroad Co., dated July 1, 1899—$1,140,000 outstanding.

River and Gulf Divisions, First Mortgage, Four Per Cent Gold Bonds of St. Louis, Iron Mountain & Southern Railway Company, dated May 1, 1903—$34,548,000 outstanding.

Certificates Series A issued by Guaranty Trust Company of New York, Trustee under Texarkana Union Station Trust, interest rate five per cent, dated December 1, 1927—$1,500,000 outstanding, on which Missouri Pacific Railroad Company's primary liability is $450,000.

Equipment Gold Notes Series 41 of Missouri Pacific Railroad Company, interest rate six per cent, dated January 15, 1920—$1,386,800 outstanding.

Equipment Trust Certificates, Series A, of Missouri Pacific Railroad Company, interest rate six and one-half per cent, dated February 1, 1921—$459,000 outstanding.

Equipment Trust Certificates, Series B, of Missouri Pacific Railroad Company, interest rate five and one-half per cent, dated November 1, 1923—$1,596,000 outstanding.

Equipment Trust Certificates, Series C, of Missouri Pacific Railroad Company, interest rate five per cent, dated November 1, 1924—$1,820,000 outstanding.

Equipment Trust Certificates, Series D, of Missouri Pacific Railroad Company, interest rate five per cent, dated March 1, 1925—$4,116,000 outstanding.

Equipment Trust Certificates, Series E, of Missouri Pacific Railroad Company, interest rate four and one-half per cent, dated December 1, 1925—$2,576,000 outstanding.

Equipment Trust Certificates, Series F, of Missouri Pacific Railroad Company, interest rate four and one-half per cent, dated May 1, 1929—$7,140,000 outstanding.

Real Estate Security Mortgage Five Per Cent Bonds of Pacific Railroad (of Missouri), dated May 1, 1872—$799,000 outstanding.

Plaza-Olive Building First Mortgage Six Per Cent Gold Bonds, dated October 1, 1928—$809,000 outstanding.

Central Branch, Union Pacific Railway Company First Mortgage Four Per Cent Bonds, dated June 30, 1898—$1,628,000 outstanding.

2. This order shall take effect as of July 1, 1933.

3. The Court reserves for further adjudication all questions as to the marshaling of liens of all parties in interest in and to the property and income of said Debtor.

4. That all the provisions of this Order relative to Debtor shall apply to and bind any trustee or trustees thereof appointed by this Court in this proceeding. The right is reserved to the parties hereto to apply to this Court for any other instructions to the Debtor or to any trustee or trustees thereof appointed as aforesaid, and this Court reserves the full right and jurisdiction to make, from time to time, such further orders amplifying, extending, limiting or otherwise modifying this Order as this Court may at any time deem proper, and in all respects and at all times to regulate and control the conduct of Debtor.

Dated June 22, 1933.

C. B. Faris,
District Judge.

Approved:

Paul Bickel,
T. T. Railey,
Edw. J. White,
Daniel N. Kirby,
Edwin S. S. Sunderland,
Allen C. Orrick.

Filed June 22, 1933. Jas. J. O'Connor, Clerk.

Copy of Note of New Orleans, Texas & Mexico Railway Company, Dated January 27, 1933, in Principal Sum of $2,498,500, Payable to Missouri Pacific Railroad Company or Order

(Extract from Ex. 227, Introduced in Evidence at Hearings Before Interstate Commerce Commission, Tr. 530)

NOTE

No. 1
$2,498,500.00

Cleveland, Ohio
January 27, 1933

On demand, for value received, New Orleans, Texas & Mexico Railway Company promises to pay to Missouri Pacific Railroad Company or order, Two Million Four Hundred Ninety Eight Thousand Five Hundred Dollars ($2,498,500.00) with interest at the rate of 5½% per annum from the date hereof, payable quarterly on the first days of January, April, July and October in each calendar year, and hereby pledges with Missouri Pacific Railroad Company as collateral security for the payment of the principal of and the interest on this note, 74,989 shares of the capital stock of International-Great Northern Railroad Company.

This note is one of a series of two notes, aggregating not to exceed $9,955,226.78 principal amount, all secured ratably by the pledge of the above described collateral.

New Orleans, Texas & Mexico Railway Company

By (Signed) Wm. Wyer
Treasurer

Copy of Note of New Orleans, Texas & Mexico Railway Company, Dated February 28, 1933, in Principal Sum of $7,456,726.78, Payable to Missouri Pacific Railroad Company or Order

(Extract from Ex. 227 introduced in evidence at hearings before Interstate Commerce Commission, Tr. 530)

NOTE

No. 2 — Cleveland, Ohio
$7,456,726.78 — February 28, 1933

On demand, for value received, New Orleans, Texas & Mexico Railway Company promises to pay to Missouri Pacific Railroad Company or order, Seven Million Four Hundred Fifty Six Thousand Seven Hundred Twenty Six and 78/100 Dollars ($7,456,726.78) with interest at the rate of 5½% per annum from the date hereof, payable quarterly on the first days of January, April, July and October in each calendar year, and hereby pledges with Missouri Pacific Railroad Company as collateral security for the payment of the principal of and the interest on this note, 74,989 shares of the capital stock of International-Great Northern Railroad Company.

This note is one of a series of two notes, aggregating not to exceed $9,955,226.78 principal amount, all secured ratably by the pledge of the above described collateral.

New Orleans, Texas & Mexico Railway Company

By (Signed) Wm. Wyer
Treasurer

AFFIDAVIT OF THOMAS T. RAILEY, VERIFIED JANUARY 19, 1945, PREPARED FROM A COPY IN THE FILES OF CADWALADER, WICKERSHAM & TAFT. ORIGINAL MISSING.

(Introduced in evidence, this Record, page 744.)

STATE OF MISSOURI, } ss.:
CITY OF ST. LOUIS, }

AFFIDAVIT OF THOS. T. RAILEY.

I, Thos. T. Railey, of lawful age, being duly sworn, state:

For a long time prior to the institution of Missouri Pacific reorganization proceedings, I was Assistant General Solicitor of said Company, and since the institution of said proceedings March 30, 1933, have had the title of Assistant to Counsel for Trustee. I am familiar with the issues raised in subdivision 19 and in Schedule A of objections of Andrew W. Comstock to the plan of reorganization embodied in Interstate Commerce Commission's Order of October 9, 1944, and know of my own knowledge that the officers of Missouri Pacific Railroad Company and of the Gulf Coast Lines hereinafter referred to who are now deceased would, if living, be in a position to offer substantial testimony on one or more of the issues involved in said controversy, said deceased officers being as follows, to-wit:

(1) Mr. William H. Williams, Chairman of the Board of Missouri Pacific Railroad Company and of New Orleans, Texas & Mexico Railway Company prior to May 1930, died October 14, 1931. Mr. Williams presided over certain Board of Directors and Executive Committee meetings, extracts from which have been offered in evidence respecting the transactions in question.

(2) Mr. O. P. Van Sweringen, who succeeded Mr. Williams as Chairman of the Board of Directors of said Companies, died November 23, 1936.

(3) Mr. H. R. Safford, Executive Vice-President of the Gulf Coast Lines from about the time that they were acquired by the Missouri Pacific in December, 1924, down to date of the reorganization proceedings in 1933, died April 10, 1943. Mr. Safford testified at the hearings before the Commission on the Plan, particularly with respect to the conditions of the Gulf Coast Lines, and if living his testimony would to my knowledge be important in connection with the controversies involved in the Comstock objections.

(4) Mr. F. P. Johnson, Vice-President in charge of accounting of Missouri Pacific Railroad Company and subsidiary lines for a long time prior to institution of the reorganization proceedings, died April 11, 1938. Mr. Johnson testified at some length in the hearings before the Interstate Commerce Commission on the Plan, and if living, his testimony would be very essential in connection with the issues involved in the Comstock objections to the Plan.

(5) Mr. J. Cannon, who for a long time prior to date of institution of the reorganization proceedings was Vice-President & General Manager of Missouri Pacific Railroad Company, died September 14, 1941. If living, his testimony might be of value in explaining operating arrangements between Gulf Coast Lines and Missouri Pacific.

(6) Mr. L. A. David, former General Superintendent of Missouri Pacific, and Assistant General Manager of Gulf Coast Lines at the time of his death, January 11, 1939, would to my knowledge, if living, be an important witness with respect to the allegations in the Comstock motion involving condition of equipment and engine hire. In connection with the somewhat similar issue raised in 1937 by motion for appointment of separate Trustee for the Gulf Coast Lines, Mr. David was selected as the officer best qualified to cover this class of testimony.

(7) Mr. Horace Booth, General Freight Traffic Manager, Texas Lines, for many years prior to the institution of the

reorganization proceedings, died May 18, 1944. If living, his testimony would be of great value in explaining any advantages or disadvantages to the Gulf Coast Lines by reason of their operation as part of the Missouri Pacific System.

(8) Mr. E. J. White, Vice-President & General Solicitor, Missouri Pacific Railroad Company, who if living would be familiar with many of the questions involved, died December 29, 1935.

(9) Mr. Frank Andrews, General Solicitor for the Texas Lines, died December 8, 1936. Mr. Andrews' name has been mentioned as a member of the Board of Directors, and Legal Adviser for the officers of certain of the Gulf Coast Lines, and as such attorney approved the payment of some of the dividends now in question.

Numerous other officers of the Missouri Pacific and of the Gulf Coast Lines whose testimony might be of value are now deceased, such, for example, as Mr. T. M. Niven, General Auditor, Missouri Pacific, and Mr. O. B. Huntsman, Vice-President & Assistant Treasurer & Secretary of Missouri Pacific and certain subsidiaries.

From information obtained in an effort to furnish various documents requested by the attorneys in this proceeding, and upon general information and belief, I am of the opinion that many of the Carriers' records which might be pertinent to the controversy in question have been lost or destroyed.

THOMAS T. RAILEY

Subscribed and sworn to before me this 19th day of January, 1945.

My Commission expires September 15, 1948.

WALT W. HAVERFIELD
Notary Public

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000. principal amount of said bonds,

Petitioner,

VS.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

WILLIAM H. BIGGS,
Attorney for Petitioner,
Security Building,
St. Louis 2, Missouri.

PHILLIP I. BLUMBERG,
of Counsel.

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IN THE

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OCTOBER TERM, 1947

No.

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000. principal amount of said bonds,

Petitioner,

VS.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Eighth Circuit to review the order and judgment of that Court rendered in the above cause, affirming the order, judgment, and decree of the District Court of the United States for the Eastern District of Missouri.

Jurisdiction

Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended. The date of the order and judgment of the Circuit Court of Appeals for the Eighth Circuit was August 28, 1947.

The Opinions of the Courts Below

The opinion of the District Court (R. 1089*) is reported in 64 F. Supp. 64. The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. IV—13) is reported in 163 F. (2d) 350.

Summary Statement of the Case

This case involves the validity and priority of the $10,565,227 claim of the Missouri Pacific R. R. Co. (hereinafter called MOP) in reorganization against its controlled and dominated subsidiary, New Orleans, Texas & Mexico Ry. Co. (hereinafter called NOTM). MOP seeks to insert its Inter-Company Claim ahead of the claims of public investors, secured by MOP's pledge of NOTM capital stock.

MOP managed the financial affairs of NOTM in the following manner. It caused NOTM to pay to it dividends over twenty consecutive quarters well in excess of NOTM income, although NOTM was without funds and was already borrowing for an extensive expansion program.

For three years, NOTM could only pay such dividends to MOP by bookkeeping transactions in which MOP made

* References to the transcript of the record are indicated by the letter "R." except for Volume IV thereof which is indicated by "R. IV". References to the volumes of exhibits are indicated by the letters "Ex.". Arabic numerals in all instances indicate pages.

"advances" to NOTM one day in amounts substantially equivalent to the dividends paid by NOTM on the next.

NOTM's lack of resources required it to borrow continually and heavily from the public, when it could, and from MOP, when public borrowing was impossible. MOP supplied NOTM with funds, but MOP always termed them "advances", and never additional capital investments.

MOP further sought to benefit itself at NOTM's expense by other methods, one of which was a bookkeeping shifting of indebtedness. MOP arbitrarily increased its claim against NOTM and as consideration therefor allegedly arranged for the assignment to NOTM of uncollectible claims in the same face amount, from which NOTM to this day has not received one penny.

These "advances" for dividends, these "advances" in lieu of needed capital investments, and this arbitrary shifting of indebtedness constitute practically the entire Inter-Company Claim allowed by the Courts below.

Petitioner contends that the Claim must be disallowed or subordinated.

Facts

This petition is submitted on behalf of Andrew W. Comstock, representing himself and fourteen other public investors owning in excess of $980,000 principal amount of Missouri Pacific 5¼% Secured Bonds.* On the bankruptcy of MOP, $12,140,000 of these bonds were outstanding, secured by MOP's pledge of 121,460 shares, or 82%, of NOTM capital stock.**

On March 31, 1933, MOP and NOTM filed petitions for reorganization under Section 77 of the National Bankruptcy Act (R. 89). On September 19, 1947, at the request

* Comstock's objections to the MOP Claim were also adopted by a committee representing an additional $199,000 principal amount of such bonds.

** NOTM has only one class of stock.

of the Interstate Commerce Commission (hereinafter called Commission), the Plan of Reorganization of these roads was remanded to the Commission for "further investigation, consideration and recommendation". The Commission hearings on the Reorganization Plan are not scheduled to begin until January 27, 1948.

Review of this case will not delay the reorganization.

In these proceedings, MOP filed a proof of claim against NOTM in the amount of $10,565,226.78, allegedly based on

> "Cash advances for operation, interest payments and so forth, at various times from March, 1929 to February, 1933, both inclusive" (Ex. 1, R. 402).

The alleged creditor, MOP, and the alleged debtor, NOTM, at all times have had a common trustee, Mr. Guy A. Thompson.* This common trustee at no time took any steps to oppose the MOP Inter-Company Claim.

Public investors found it necessary to assume the burden of protecting NOTM against this alleged claim. Petitioner thus asserted objections to the MOP Claim in the 1943 Commission hearings on the MOP Plan. The Commission ruled that this issue "should be left to litigation in the courts" (R. 20842).

Petitioner objected to the MOP Claim in the District Court, contending, among other things, that the MOP Claim must be disallowed or subordinated to the claim of the MOP 5¼% Secured Bonds** (R. 227, 232-33, 237-47). After hearings, the District Court overruled such objections and allowed the MOP Claim in full, together with interest at 5½% and 6%, totalling an additional $7,500,000. The Circuit Court of Appeals for the Eighth Circuit affirmed (R. 7, IV—13).

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* Mr. L. W. Baldwin had originally been appointed a co-trustee of MOP and NOTM, but resigned in 1935 (R. 76, 89).

** The Commission assumed the validity and priority of the claim in determining the allocation to the MOP 5¼% Secured Bonds (R. 20842). Clearly if such claim is invalid or is subordinated, the treatment to be accorded such bonds in any subsequent plan must necessarily be materially enhanced.

There is remarkably little in the record which is disputed. Almost all the evidence is documentary, taken from the books and records of MOP, NOTM and its subsidiaries.

MOP Ownership of NOTM

Under circumstances condemned by the Commission,* MOP acquired majority control of NOTM from a banking syndicate in 1924.

Until bankruptcy, MOP thereafter dominated NOTM and NOTM's subsidiaries through ownership of up to 93% of NOTM stock, through common officers, and through interlocking directorates. Every director of NOTM was a MOP director or officer—MOP officers occupied comparable offices in NOTM and NOTM subsidiaries (Ex. 5-61, 177, R. 403-6, 630). NOTM was operated as a department or instrumentality of MOP.

Exploitation of NOTM by Wrongful Dividends

Under MOP control, NOTM was caused to pay dividends in each and every quarter from 1925 through 1931, aggregating $7,267,386. Almost all these dividends went to MOP (Ex. 177, R. 630). Even though NOTM was then borrowing to pay its operating charges, interest due on its bonds, and sinking fund obligations, MOP's pressure on NOTM for dividends was unrelenting** (Ex. 281, R. 900).

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* *Control of Gulf Coast Lines by Missouri Pacific R. R.*, 94 I. C. C. 191, 199-200, 204 (1924). NOTM and its subsidiaries (other than the International-Great Northern Ry. Co., hereinafter called I-GN) are known as the Gulf Coast Lines (R. 10).

** The Commission referring to MOP's dividend policy said: at a later date that MOP under Van Sweringen control: "* * * for its own purposes caused or permitted carrier corporations which it controlled to pay dividends when they were not being earned, or to pay dividends when they were under a heavy burden of debt, when traffic was declining, and earnings were decreasing notwithstanding scrimping of maintenance." *Chesapeake & Ohio Ry. Purchase*, 261 I. C. C. 239, 255 (1945).

(a) NOTM Dividends to MOP Exceeded NOTM Earnings

NOTM dividends substantially exceeded income. In only two * of the seven years from 1925 through 1931 was NOTM's income adequate to pay the annual dividends exacted by MOP (Ex. 195, R. 663).

The total consolidated earnings of NOTM and its subsidiaries were less than NOTM dividends in each year from 1927 to bankruptcy. During this period, NOTM dividends totalled $5,190,000 against consolidated earnings of $1,151,000 (Ex. 301, R. 914).

NOTM dividends were not merely in excess of income. Mr. Wyer, the principal witness in support of the claim, admitted before the United States Senate Committee on Interstate Commerce that 1931 NOTM dividends were paid out of capital.**

(b) Matching of Simultaneous MOP Advances to NOTM and NOTM Dividends to MOP

From 1928 through 1931, NOTM was able to pay dividends only by simultaneous advances from MOP (Ex. 281, R. 900). These MOP advances were paper transactions by which MOP advanced sums to NOTM with one hand, and simultaneously took them back by way of dividends with the other. They were usually accomplished by checks drawn by an officer of MOP and then endorsed by the same person acting as an officer of NOTM (Ex. 239, 26-50, R. 791, 406). Without such paper advances, NOTM could not have paid these dividends (Ex. 75-79, R. 453).

For example, on February 28, 1930, NOTM had a cash balance of only $13,565. On that day, NOTM borrowed

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* Without the paper dividends from a subsidiary which the Commission later condemned and directed NOTM to write off insofar as then still unpaid, NOTM suffered a substantial loss in 1931 although the books show an ostensible profit for the year (Ex. 62-4, R. 420-2).

** *Hearings before Subcommittee of Senate Committee on Interstate Commerce* pursuant to S. Res. 71, 75th Cong., 1st Sess., Part 12, p. 5296 (1938). Judicial notice may be taken of these official reports. *Arizona* v. *California*, 283 U. S. 423, 453-4 (1931).

$260,000 from MOP. On the next day, NOTM paid its quarterly dividend of $259,576, of which $242,072 went back to MOP.

This matching of simultaneous advances from MOP and dividends to MOP was repeated in eleven out of thirteen consecutive quarters, from November, 1928 through November, 1931 (Ex. 75-81, 281, R. 453, 900).

Amount of MOP "Advance"	*Date of MOP "Advance"*	*Payment of NOTM Dividend*
$ 300,000	Nov. 30, 1928	1 day later
250,000	Feb. 28, 1929	1 day "
275,000	Aug. 31, 1929	3 days "
310,000	Nov. 29, 1929	2 days "
260,000	Feb. 28, 1930	1 day "
275,000	May 31, 1930	1 day "
300,000	Nov. 29, 1930	2 days "
75,000	Feb. 25, 1931	3 days "
200,000	May 27, 1931	5 days "
250,000	Aug. 29, 1931	2 days "
300,000	Nov. 27, 1931	4 days "
$2,795,000	TOTAL "ADVANCES"	TOTAL DIVIDENDS* $2,855,333
		MOP's Share $2,654,000
$ 254,091	AVERAGE "ADVANCE"	EACH DIVIDEND $ 259,576

Although MOP advanced to NOTM $2,795,000, it received back $2,654,000 in dividends within a day or two. The total net advance from MOP to NOTM was only $141,000 ($2,795,000 less $2,654,000) (Ex. 177, R. 630).

Yet, the Courts below allowed MOP its claim of $2,795,000 plus interest of about $2,000,000, aggregating about $4,795,000, for this net advance of $141,000. This constitutes a return of over 3400% to a fiduciary parent.

(c) Dividends Drained from Brownsville to Make Possible NOTM Dividends to MOP

In order to make possible the steady flow of NOTM dividends to MOP, the St. Louis, Brownsville & Mexico Ry.

* Eleven dividends of $259,575.75 each.

Co. (hereinafter called Brownsville)—NOTM's principal subsidiary—was repeatedly caused to declare dividends to NOTM (Ex. 111-21, 123-34, 172, 206, R. 569-601, 616, 674). This policy reached a fantastic climax in 1931.

On April 16, 1931, Mr. Baldwin—President of MOP and NOTM—wrote to Mr. Safford—Vice-President of MOP and NOTM:

> "I want to impress upon you again the fact that although it may necessitate a much more drastic curtailment of expense than you have ever had or anticipated, the NOT&M must earn and pay its dividend this year and have $100,000 left in addition" (Ex. 135, R. 601).

Mr. Safford replied that NOTM earnings were much too low to make this possible despite the fact that expenses were "very close to the irreducible minimum unless we make some further drastic reduction in service" (Ex. 135-7, R. 601). Nonetheless, MOP caused NOTM to pay its dividends regularly in 1931 although "earnings were decreasing notwithstanding scrimping of maintenance" (261 I. C. C. at 255). NOTM was able to do so only as a result of an ostensible surplus created by 1931 Brownsville dividends.

On June 17, 1931, MOP caused Brownsville to declare dividends to NOTM of $655,079 or 131% on Brownsville stock (Ex. 113-9, 206, R. 576, 579, 674). This was still not enough. On July 11, 1931, Brownsville, at MOP's direction, declared a further dividend of 700% amounting to $3,500,000, an amount greater than the sum of all Brownsville dividends for the preceding fifteen years (Ex. 106, 206, R. 564, 674).

These 1931 dividends totalled $4,155,079, although Brownsville suffered a deficit for the year (Ex. 309, R. 927). These dividends have not been paid in full even to this date (Ex. 102, R. 519).

In auditing the Brownsville accounts, the Commission held that the interlocking directors and officers knew at

the time that these Brownsville dividends could not be paid. Accordingly, the Commission disapproved the dividends and directed NOTM to write them off insofar as they were then still unpaid (Ex. 62-4, R. 420-2).

These 1931 and earlier Brownsville dividends were declared though Brownsville's long past due indebtedness to NOTM for fuel, materials and supplies, and even for interest paid on Brownsville equipment trust notes, had been steadily mounting from less than one million dollars in 1924 to over $10,200,000 by 1932 (Ex. 102, 103, 189, R. 519, 538, 660).

In such fashion, MOP—by reason of its own desperate position—disregarded the needs and welfare of NOTM and its subsidiaries (Ex. 83, 156-60, R. 455, 613). The fiscal affairs of NOTM were managed in the New York or Cleveland offices of MOP—without regard to the railroad operations of NOTM* (R. 590, 594, 597). In short, every financial act of NOTM was the act of MOP. Beyond that, MOP determined the form in which such financial transactions were recorded on the books of MOP and NOTM.

MOP's Claim Includes $1,261,009 Saddled on NOTM without Authority or Consideration

In October, 1932, MOP imposed a bookkeeping transaction on NOTM amounting to $1,261,009 which MOP included in its claim and which the Courts below allowed (Ex. 221-5, 231-2, 240-1, R. 701, 706, 794).

This transaction was conducted in the shadow of bankruptcy, which occurred less than six months later.

Mr. Baldwin, President and operating head of MOP and NOTM, testified that his relations with the financial offices in New York were: " * * quite indefinite, largely being a good fellow, I guess * * *" (R. 597). The Chairman of the Board and Mr. Wyer had their offices in New York and then in Cleveland.

The only contact that the NOTM main office in Houston, Texas had with the NOTM financial office in New York and Cleveland was through the MOP office at St. Louis. The NOTM auditing department never saw the books kept in the NOTM financial office. That was under the "jurisdiction" of the MOP office (R. 499-502, 590-5).

MOP had unsecured claims against two subsidiaries—NOTM and I-GN. The financial position of NOTM was stronger (R. 20879, Appdx. C).

MOP moved to improve its position by shifting debtors. MOP arbitrarily increased its claim against NOTM by $1,261,009. MOP simultaneously reduced its claim against I-GN by the same amount. As alleged consideration for the write-up, MOP planned to have I-GN assign to NOTM $1,261,009 of uncollectible claims which I-GN had against certain NOTM subsidiaries—I-GN sister companies. NOTM had not previously had any connection with or liability for these claims in any way.

There was no pretense of corporate action by NOTM or I-GN. Mr. Wyer in Cleveland merely wrote a directive on MOP stationery to Mr. Baldwin outlining what was to be done, and the bookkeeping entries followed automatically (R. 703).*

The officers of MOP knew at the time that these I-GN receivables were uncollectible (R. 797, 1043; Ex. 240, R. 794).**

Mr. Eckert, the then NOTM auditor and one of the few NOTM officers who was not also an officer of MOP, did not know the details of this transaction until the District Court hearing, twelve years later (Ex. 52, R. 406). Mr. Eckert testified:

> "* * * I haven't seen any of these (journal) entries at all. This is news to me" (R. 702).

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* This is one example of Mr. Wyer's bookkeeping. Before the Senate Committee, Mr. Wyer admitted that his bookkeeping of MOP and MOP subsidiaries had been false in numerous respects.

President (then Senator) Truman, who was conducting the hearing, replied to a comment by Mr. Wyer: "Mr. Wyer * * * this statement is exactly in line with your bookkeeping. I do not think it conveys the truth * * *" (Senate Committee Hearings, *supra*, 75th Cong., 1st Sess., Part 12, pp. 5059-63, 5079, 5269).

** For example, about $800,000 of these claims were due from a road, San Antonio, Uvalde & Gulf R. R., that had been in default for years on its first mortgage bond interest, which default totaled $975,000 by December 31, 1932 (Ex. 179, 223, R. 632, 701).

Yet, the sum of $1,261,009, together with interest amounting to about $900,000, was allowed by the Courts below.

The record contains evidence of other examples of financial burdens imposed on NOTM by MOP for the benefit of MOP. Thus, NOTM was compelled to borrow and expend millions of dollars to acquire North Texas "feeder" lines for the benefit of MOP and I-GN, not NOTM (Ex. 193, 233, R. 662). These "feeder" roads* do not even connect with NOTM or any of the Gulf Coast Lines, but tie in with I-GN (Ex. 213, R. 605-6, 678). As the Commission found, it was recognized that these "feeder" lines "were really acquired for the benefit of the entire (MOP) system * * * they have usually been operated at a deficit since acquisition." **

Respondents in the Courts below presented testimony in an effort to show that the traffic, physical conditions and operations of NOTM had been improved during the years of MOP control (R. 814-67, 933-59; Ex. 249-66). The District Court so found (R. 13).

History of NOTM Notes Representing the Bulk of the Claim

All MOP "advances" to NOTM—whether cash, bookkeeping entries or paper transactions—were recorded as open book accounts. When MOP sought to obtain loans from the Reconstruction Finance Corporation and the Railroad Credit Corporation (hereinafter called R. F. C. and R. C. C.), the open accounts constituting the MOP Claim (except for $610,000) were transmuted into two demand notes within nine weeks of bankruptcy. These notes were signed by Mr. William Wyer, as Treasurer of NOTM,

* These include the Asphalt Belt Ry., Asherton & Gulf Ry., and the San Antonio Southern Ry.

** *Missouri Pacific R. R. Reorganization*, 239 I. C. C. 7, 71 (1940).

and delivered to himself as Treasurer of MOP (Ex. 51-2, 348-9; R. 406). The notes were immediately pledged together with other collateral by MOP to the R. F. C. and R. C. C. (R. 30).*

Subsequently, pursuant to Court order, the R. F. C. and R. C. C. claims against MOP were paid and the claims and collateral, including the two NOTM notes, surrendered to the Trustee of MOP (R. 1155, 1164). The R. F. C. was then stricken as a party to these proceedings (R. 1348).

Nature of the Proceedings Below

In the District Court, petitioner Comstock originally petitioned for leave to file objections to the MOP Claim in the name of the Trustee of NOTM (R. 247). He also filed objections to the then pending MOP Plan; of these, objection No. 19 and related objections repeated the objections to the MOP Claim contained in the first petition (R. 227, 232-33).

Counsel for respondents contended that the issues raised by these two documents of petitioner were identical, and that petitioner should be compelled to litigate the Claim in connection with the hearings on the Plan, rather than in two separate hearings (R. 338-39, 365-67). The District Court agreed (R. 367).

The validity and priority of the MOP Claim, as attacked in Comstock's Objection No. 19, were thereafter the subject of a separate hearing by the District Court, and were determined by a separate order, from which a separate appeal to the Circuit Court of Appeals was taken (R. 1, 7, 378).

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* An R. F. C. official stated that the R. F. C. made the loans to MOP on the basis of financial statements sworn to by Mr. Wyer which were false and "crooked" (Senate Committee Hearings, *supra*, 75th Cong., 1st Sess., Part 3, pp. 1116, 1139 [1938]). The late Commissioner Joseph B. Eastman also characterized these financial statements as false (Senate Committee Hearings, *supra*, 74th Cong., 2d Sess., Part 2, p. 544 [1938]). The Commission deemed this incident sufficiently serious to be included in its formal report to the Congress, (1937) I. C. C. Annual Report, pp. 27-8.

The District Court held that the MOP Claim "should be allowed" (R. 31-4). The Circuit Court held that "the claim of Missouri Pacific was properly allowed" (IV—27).

The Courts below were thus passing on the validity and priority of a claim and objections thereto.*

This is litigation over such orders of allowance and is independent of any particular plan of reorganization.

The Questions Presented

1. Whether the $10,565,227 claim of a parent corporation in reorganization against a dominated subsidiary is valid in its entirety and ranks prior to the claim of public investors, who are secured by the parent's pledge of the subsidiary's stock, when:

(a) $2,795,000 of the Claim is based on eleven "advances" made by the parent over thirteen consecutive quarters which were matched within one to five days by dividends from the subsidiary to the parent in substantially equivalent amounts, which the subsidiary could not have otherwise paid.

(b) The parent did not permit the subsidiary to devote its earnings to its own needs, but caused the subsidiary to pay to the parent twenty consecutive quarterly dividends in excess of earnings, and four and one-half times the consolidated earnings of the subsidiary and its affiliated companies, while the subsidiary was already borrowing heavily for an extensive expansion program.

(c) $1,261,009 of the Claim is based on the parent's write-up of the subsidiary's indebtedness through bookkeeping entries made six months before bankruptcy without the consent or approval of the subsidiary—the consideration for such write-up being the alleged assignment to the subsidiary of uncollectible claims in the same face

* There were three other related appeals heard before the Circuit Court on a consolidated record. These three causes are the subject of the petition annexed hereto.

amount, from which the subsidiary has not received one penny tc this day.

(d) Much of the Claim represents funds supplied by the parent to the subsidiary, whose resources were inadequate to enable it to finance an extensive expansion program, after public borrowing became impossible, which funds were denominated by the parent as "advances" and never as additional capital investments.

2. Whether the doctrine of subordination of a claim of a parent corporation against a dominated subsidiary to the claims of public investors is inapplicable, when the parent corporation is insolvent and its claim is asserted by the parent's creditors, who did not participate in the parent's wrongdoing?

3. Whether the doctrine of subordination of a claim of a parent corporation against a dominated subsidiary to the claims of public investors is inapplicable, when such public investors are claiming through the *common* stock of the subsidiary?

4. Whether a court may allow the disputed claim of a parent corporation against a dominated subsidiary, both being in reorganization with the identical trustee, over the challenge of public investors, when the subsidiary has never had the protection of a separate and independent trustee?

Reasons Relied On for the Allowance of the Writ

1. The decision of the Circuit Court of Appeals for the Eighth Circuit is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit on the same matters. *In re Commonwealth Light & Power Co.*, 141 F. (2d) 734 (C. C. A. 7th, 1944).

2. The decision of the Circuit Court of Appeals for the Eighth Circuit is in conflict with the decision of this Court in *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939), on the same matters.

3. It is of public importance in the administration of the bankruptcy laws and of large corporate reorganizations thereunder that certain questions relating to the scope of the doctrine of subordination be settled. These questions presented by the instant case are:

(a) Whether the claim of a parent corporation against a dominated subsidiary may be subordinated to the claims of public investors, when the parent corporation is insolvent and its claim is asserted by the parent's creditors, who did not participate in the parent's wrongdoing?

(b) Whether the claim of a parent corporation against a dominated subsidiary may be subordinated to the claims of public investors, when such public investors are claiming through the *common* stock of the subsidiary?

4. The decision of the Circuit Court of Appeals for the Eighth Circuit is in conflict with the established policy of the Securities and Exchange Commission.

5. The Circuit Court of Appeals for the Eighth Circuit has decided a question of law of substantial importance in the administration of the bankruptcy laws, which has not been settled, but which should be settled by this Court, to wit,

a disputed claim of a parent corporation against a dominated subsidiary, both being in reorganization with the identical trustee, may be allowed over the challenge of public investors although the subsidiary has never had the protection of a separate and independent trustee.

CONCLUSION

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit to review the order and judgment of that Court in the above cause; and that said order and judgment be reversed; and that your petitioner be granted such other and further relief as may seem proper.

Respectfully submitted,

WILLIAM H. BIGGS,
Attorney for Petitioner,
Security Building,
St. Louis 2, Missouri.

PHILLIP I. BLUMBERG,
of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No.

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000. principal amount of said bonds,

Petitioner,

vs.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The matters set forth in the foregoing petition are hereby adopted and made part of this brief.

POINT I

The instant case is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in the *Commonwealth* case.

The decision of the Circuit Court of Appeals for the Eighth Circuit in the instant case is in square conflict with

the decision of the Circuit Court of Appeals for the Seventh Circuit in *In re Commonwealth Light & Power Co.*, 141 F. (2d) 734 (C. C. A. 7th, 1944).

In the *Commonwealth* case, the parent corporation, Inland, organized a subsidiary, Michigan, and received all the Michigan common stock. Inland then pledged this stock to secure a public issue of Inland bonds.

Years later, Inland (the parent) went into Section 77B reorganization proceedings. It then had a $620,132 claim against Michigan for advances.

Michigan never went into reorganization, and its stock was subsequently sold for over $1,000,000, pursuant to court order.* The question was whether the proceeds of the sale should first be applied to Inland's $620,132 claim against Michigan, or to the claim of Inland public bondholders who had held the pledged Michigan common stock.

The Circuit Court of Appeals subordinated the parent's claim and awarded the proceeds to the public investors, concluding that:

> "Michigan was under the complete control and domination of Inland; that
>
> it was insufficiently capitalized; that
>
> Inland failed to make provision for sound financing for Michigan's extensive rehabilitation and expansion program; and that
>
> Michigan, upon the demand of Inland, declared dividends which were paid to Inland by open account borrowings from Inland. * * *" (141 F. (2d) at 739).

The basic identity between the *Commonwealth* case and the instant case cannot be questioned. Every element emphasized by the Court in the *Commonwealth* case is present herein.

---

* To facilitate the sale, the Michigan stock was sold free of the Inland claim.

(a) Complete Control and Domination

Like Inland, MOP completely dominated and controlled its subsidiary, NOTM. Respondents herein have conceded such control (Institutional Group Brief, C. C. A. 8th, March 29, 1947, p. 53). The Courts below so found (R. 11; IV—15).

(b) Matching "Advances" and Dividends

MOP and Inland both insisted on a continued flow of dividends from their subsidiaries irrespective of earnings, financial needs, or even the utter lack of funds with which to pay dividends.

Quarter in and quarter out in 1929, 1930 and 1931, the parents thus made "advances" to their respective subsidiaries on one day which were matched by "dividends" to the parents in relatively equivalent amounts a few days later.

In the *Commonwealth* case, this bookkeeping matching occurred as follows:

Amount of Advance	*Date of Advance*	*Payment of Dividend*	*Amount of Dividend*
$29,576	June 25, 1929	5 days later	$29,576
29,576	Sept. 26, 1929	4 days later	29,576
60,000	Jan. 6, 1930	6 days before	51,844
8,000	June 25, 1930	5 days later	7,663
40,000	Oct. 9, 1930	9 days before	38,313
59,000	Mar. 25, 1931	6 days later	34,000
40,000	June 20, 1931	10 days later	34,000
45,000	Sept. 24, 1931	5 days later	34,000
25,000	Dec. 26, 1931	5 days later	34,000
82,500*	Mar. 30, 1932	1 day later	34,000

(S. E. C. Ex. 28, *Commonwealth* Record, C. C. A. 7th, Vol. II, pp. 985-7)

On page 7, *supra*, appears a chart of almost simultaneous MOP advances and NOTM dividends in relatively equivalent amounts. Language cannot state more emphatically than these two charts the identity between the *Commonwealth* case and the instant case.

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* This item bears a notation also referring to bond interest.

The Circuit Court below did not even refer to the *Commonwealth* case, although petitioner emphasized its identity with the case at bar.

It is indisputable that if MOP or Inland had not made these advances, payment of the dividends would have been impossible. NOTM and Michigan did not have the funds (Ex. 75-79, R. 453; S. E. C. Ex. 28, *Commonwealth* Record, C. C. A. 7th, Vol. II, p. 986).

(c) Absence of Sound Financing for Expansion

The Court in the *Commonwealth* case also emphasized Inland's role in failing to provide sound financing for the "extensive rehabilitation and expansion program" which it caused Michigan to undertake.

By supplying Michigan with funds needed for improvements in the form of loans rather than as additional equity investment, Inland created a claim, which it later sought to insert ahead of the claims of public investors.

MOP's financing of NOTM's expansion program was even more harmful.

Whereas in the *Commonwealth* case, Inland kept Michigan dividends to 80% of Michigan earnings, MOP went further. It compelled NOTM to declare dividends well in excess of earnings. Thus, from 1927 to 1932, NOTM dividends were four and one-half times consolidated NOTM earnings. Dividends of $5,190,000 were paid against earnings of only $1,151,000 (Ex. 301, R. 914).

Furthermore, Inland made an additional capital contribution to Michigan by surrendering its claim for $450,000 of previous advances for additional Michigan common stock; this sum was almost three-quarters of Inland's subsequent claim.

MOP, however, compelled NOTM to finance its expansion program entirely out of borrowed funds. When MOP acquired a controlling interest in NOTM from the bankers,

it did not put a penny into the NOTM treasury. On the contrary, to reduce the purchase price to MOP, NOTM was caused to pay $2,500,000 in extraordinary dividends.

Nor did MOP subsequently make any additional equity investment in NOTM.*

MOP's draining of the NOTM treasury did not stop there. By compelling NOTM to pay dividends well in excess of earnings, MOP actually decreased its investment in NOTM and prejudiced the equity of the pledged stock.

Such a drain on NOTM assets for the benefit of MOP substantially weakened NOTM's ability to finance, out of its own assets, the expansion program thereafter dictated by MOP. NOTM became all the more dependent on borrowing from MOP.

(d) Inadequate Capitalization

The resources of Michigan were inadequate for the conduct of its business. Its financial history, like that of NOTM, consisted of a dreary cycle of bank loans and advances from its parent (Inland) which in turn were refunded as long as possible by public security issues. Despite Michigan's needs, Inland did not want its own funds tied up in Michigan, and repaid itself as fast as it could with the proceeds of Michigan public security issues.

Michigan's publicly held bonds and preferred stock increased by 250% in five years. Michigan's cash position was weak and its open account indebtedness to Inland continued to grow. During the same period Inland made only one additional equity investment in Michigan.

Under MOP control, NOTM also suffered from insufficient capitalization. During the entire period, NOTM was forced to borrow continuously and heavily, in good years and in bad. It borrowed, among other things, for an improvement program, for interest payments on bonded debt, for principal and interest on equipment trusts, and for sinking fund installments (Ex. 281, R. 900).

---

* Its shares of NOTM stock were acquired from New York bankers or on the market; NOTM received no additional capital.

As long as possible, these sums were raised from the banks and MOP and refunded by public bond issues, with NOTM total bonded indebtedness climbing from $29,382,000 in 1924 to almost $43,000,000 four years later (Ex. 71, R. 432). Annual fixed interest requirements almost doubled, rising from $1,463,000 in 1925 to $2,685,000 in 1932 (Ex. 99, R. 488). At the same time, NOTM consolidated income declined precipitously (Ex. 301, R. 914).

After the spring of 1928, NOTM was no longer able to borrow from the public (R. 1024). At the same time, NOTM became chronically short of cash working capital.* From then until bankruptcy, NOTM's cash position grew weaker. Its open account debt to MOP rose steadily.

The *Commonwealth* case condemned the parent for the subsidiary's inadequate capitalization despite the fact that the subsidiary never went into reorganization. The inadequacy of capitalization in the instant case is all the more serious because it resulted in the subsidiary going into reorganization.

(e) Public Pledgees of the Subsidiary's Stock Competing with the Insolvent Parent's Creditors

In each of these cases, the interest of the public investors arose in the same way. Public bondholders of the parent, secured by the parent's pledge of the subsidiary's capital stock, urged the subordination of the parent's claim.

Furthermore, each parent corporation was bankrupt. Creditors of the parent, who did not participate in the wrongdoing, asserted the parent's claim.

The *Commonwealth* Court expressly held that the fact that the parent's claim was not asserted by the parent itself did not prevent subordination to the claim of public in-

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* NOTM cash which had averaged $992,000 during the early years of MOP control (1925 to 1927) dropped sharply to an average of $209,000 from 1929 to 1932 (Ex. 69, R. 432). These are year-end averages.

vestors. The District Court below, however, flatly disagreed, and held that subordination is inapplicable in such a situation (R. 1111). The Circuit Court below affirmed.

(f) Operational Benefits Do Not Excuse Financial Mismanagement

In each case, the parent's wrongdoing consists solely of financial exploitation.

In the *Commonwealth* case, Michigan had received substantial benefits from an "extensive rehabilitation and expansion program". Although this fact was vigorously urged in support of the claim,* the *Commonwealth* Court held that financial mismanagement by a parent required subordination.

The Courts below rejected subordination because of the operational benefits received by the subsidiary, NOTM. In so doing, they rejected the rule of the *Commonwealth* case (R. 1110, IV—26).

Thus, there is a fundamental identity between these two cases. The inter-corporate manipulations of the Insull Utility Empire are repeated, with surprising duplication of detail, in its contemporary, the Van Sweringen Railroad Empire.

In these very reorganization proceedings, the late Circuit Judge Faris excoriated the exploitation of MOP by its parent, the Van Sweringen-dominated Alleghany Corporation **; he stated:

> "For to me it is plain that the Congress intended to stop a practice among railroads and their exploiters

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* See Joint Brief of The Middle West Corporation and Bachrach, Trustee, in support of the Inland Claim, C. C. A. 7th, p. 27.

** This arose on the application of the R. F. C.—then a claimant—to require the MOP Trustee to disavow or rescind what Judge Faris subsequently found to be "improvident, unfair, unlawful and overreaching" contracts imposed on MOP by Alleghany.

The R. F. C. application and the brief submitted by Mr. Justice Reed (then R. F. C. general counsel) attacked both Alleghany and Mr. Wyer's testimony in support of such contracts (R. F. C. Brief before Special Master, pp. 60, 77-8).

and manipulators which has had much to do with making the financial history of railroads the most indecent and sordid chapter ever written in this or any other nation." *In re Missouri Pacific R. R.*, 13 F. Supp. 888, 892 (D. Mo., 1935).

Upon identical patterns of inter-company financial wrongdoing, the Circuit Court of Appeals for the Eighth Circuit reached a decision contrary to that of the Circuit Court of Appeals for the Seventh Circuit.

We submit that this Court should resolve this conflict.

POINT II

The instant case is in conflict with the decision of this Court in the *Deep Rock* case.

The decision of the Circuit Court of Appeals for the Eighth Circuit is in conflict with the decision in the *Deep Rock* case, *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939).

In the *Deep Rock* case, this Court subordinated the entire claim of a parent, against a dominated subsidiary to the claim of public investors.

Both the parent, Standard, and the subsidiary, Deep Rock, had gone into Section 77B proceedings.

Standard asserted a claim against Deep Rock for advances totalling $9,300,000. This claim was resisted by the independent trustee of Deep Rock. After prolonged hearings, Standard proposed a compromise reducing its claim to $5,000,000, consisting solely of advances for the undisputed benefit of Deep Rock.

After rejecting one Plan based on this compromise, the District Court, with the support of most public Deep Rock preferred stockholders and the Deep Rock Trustee, allocated most of the new Deep Rock common stock to Standard for its $5,000,000 compromise claim, and a small portion of new common to the public preferred stockholders for their $5,000,000 claim. The Circuit Court affirmed.

This Court reversed, holding that it had been an abuse of discretion to fail to subordinate the entire Standard claim to the claim of the public preferred stockholders. The Court concluded:

> "It is impossible to recast Deep Rock's history and experience so as even to approximate * * * its financial condition * * * had it been adequately capitalized and independently managed and had its fiscal affairs been conducted with an eye single to its own interests" (306 U. S. at 323).

(a) Domination and Control

Standard had controlled and dominated Deep Rock through 98% common stock ownership.

This Court emphasized that Standard and Deep Rock had common officers and that "all of the fiscal affairs of the debtor (Deep Rock) were wholly controlled by Standard which was its banker and its only source of financial aid" (306 U. S. at 311).

As we have seen, identical domination, control and financial dependence are present in the instant case.

(b) Dividend Policy

An outstanding instance of Standard's misconduct * was the exploitation of Deep Rock by continued insistence upon dividends. Out of Deep Rock earnings of about $10,000,000, Standard compelled the declaration of over $5,500,000 in dividends (*Deep Rock* Record, Supreme Court, Vol. II, pp. 649-50). Most of these dividends could only be paid by simultaneous borrowing from Standard.

This Court stressed that:

> "* * * dividends were declared in the face of the fact that Deep Rock had not the cash available to pay them and was at the time borrowing in large amounts from * * * Standard * * *

* Other instances of Standard's abuse of Deep Rock included unfair leases, large service fees, 7% interest on open accounts compounded monthly, and the concealment of whether properties were being bought for Standard or Deep Rock.

"Whatever may be the fact as to the legality of such dividends * * * it is evident that they would not have been paid over the long course of years by a company on the precipice of bankruptcy and in dire need of cash working capital" (306 U. S. at 317, 323).

MOP's exploitation of NOTM through its dividend policy followed a similar line, and in some aspects was even more flagrant. Whereas Standard had kept Deep Rock dividends to less than 60% of earnings, NOTM dividends exceeded earnings.

Moreover, in the *Deep Rock* case, over half of Deep Rock dividends had gone not to Standard, but to the public preferred stockholders, the very class seeking subordination. MOP, however, received approximately 90% of each dividend it caused NOTM to declare.

(c) Inadequate Capitalization

Another element of financial mismanagement was Standard's policy of running Deep Rock without resources adequate for the conduct of its business. Such inadequacy of capitalization compelled the continued advances from the parent that mark both the *Deep Rock* case and the case at bar.

Although its original financing had enabled Deep Rock to acquire the properties needed for its business and provided $6,700,000 in working capital, Deep Rock was soon forced to borrow, and its open account to Standard rose steadily.

As this Court stated:

"* * * So inadequate was Deep Rock's capitalization that, in the period from organization to 1926, the balance due on open account to Standard grew to more than $14,800,000" (306 U. S. at 315).

Like Deep Rock, NOTM was able to conduct its business only by the continual infusion of funds borrowed from its parent.

Standard made additional equity investments in Deep Rock. Standard, for example, took additional Deep Rock common stock as payment for $11,000,000 of previous advances. This sum was more than twice the amount of Standard's subsequent compromise claim.

In contrast, MOP did not make one penny additional equity investment in NOTM, and in effect, decreased its investment in NOTM by siphoning off dividends in excess of earnings.

The Court below was influenced by the operational benefits received by NOTM from MOP, and attempted to distinguish the *Deep Rock* case on this ground. We submit that the Court below was in error as a matter of law.

Operational benefits did not prevent subordination of the Standard claim. There was evidence of considerable physical improvement of Deep Rock.* This Court pointed out that Standard had acquired additional oil properties and erected additions for the benefit of Deep Rock (306 U. S. at 317, 319).

NOTM operational benefits were not dependent on MOP financial mismanagement. If advances for dividends had not been made or if NOTM indebtedness had not been arbitrarily written up, the MOP Claim would have been smaller. Yet, not one rail less would have been laid nor one trestle less constructed.

MOP's obligations as a fiduciary relate to each and every transaction with NOTM. Operational benefits cannot excuse any breach of fiduciary obligations.

The decision of the Court below seriously limits the protection extended to public investors by the *Deep Rock* case. It is submitted that this Court should prevent the *Deep Rock* doctrine from being whittled away.

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* The *Deep Rock* record discloses that in 1927 alone, Deep Rock improvement and additions amounted to more than $1,700,000, and in 1928 alone to more than $1,700,000 (Vol. III, pp. 106, 108; Trustees' Exs. H, I).

POINT III

The instant case involves important questions as to the scope of the doctrine of subordination.

The decision of this Court in the *Deep Rock* case has engendered lively discussions in the law reviews on important questions as to the scope of the doctrine of subordination which are involved in the instant case.

E.g., Israels, *The Implications and Limitations of the Deep Rock Doctrine*, (1942) 42 Col. L. Rev. 376, 386-9;

Krotinger, *The "Deep Rock" Doctrine: A Realistic Approach to Parent-Subsidiary Law*, (1942) 42 Col. L. Rev. 1124, 1133, 1138-44;

Note (1941) 54 Harv. L. Rev. 1045, 1050-1.

The most important of these questions is whether the *Deep Rock* rule is inapplicable when the parent corporation is bankrupt and the struggle for priority is between creditors of the parent, who did not participate in the parent's wrongdoing, and innocent public investors with an interest in the subsidiary.

The *Commonwealth* case held that whether or not the parent is bankrupt is immaterial on the issue of priority. However, the District Court in the instant case, affirmed by the Circuit Court of Appeals for the Eighth Circuit, flatly disagreed with the Circuit Court of Appeals for the Seventh Circuit on the issue.

Furthermore, the District Court below held that this issue had not been involved in the *Deep Rock* case, and concluded that the doctrine of subordination was inapplicable. Although it seems to us that the *Deep Rock* case did settle the question, the commentators, cited above, view the question as still open for decision by this Court.

The *Deep Rock* decision required subordination of a parent's claim in favor of public *preferred* stockholders. This Court has never passed upon the question whether subordination may be decreed in favor of public investors claiming through *common* stock of the subsidiary.

This open question, which has been the subject of extended discussion by commentators, is presented by the instant case.

POINT IV

The instant case is in conflict with the established policy of the Securities and Exchange Commission.

The decision in the instant case is in conflict with the established policy of the Securities and Exchange Commission (hereinafter called S. E. C.).

In the *Commonwealth* case, itself, the S. E. C. took a leading role in the litigation and insisted on complete subordination of the parent's claim.

In its recent decision in the *Indiana Service* case, the S. E. C. again attacked a claim of a parent for loans to a dominated subsidiary, which were matched by almost simultaneous dividends to the parent. The S. E. C. stated in language strikingly applicable to the case at bar:

> "While some of the loans made by Utilities (the parent) to Indiana Service were more or less contemporaneous with the preferred and common stock dividend payment dates, Utilities states that there is no evidence that such advances were made in whole or in part for dividend purposes.
>
> "* * * We think it is fairly obvious that the loans made to Indiana Service concurrently with the payment of common stock dividends to Utilities when Indiana Service was in need of funds for other purposes were for the purpose of converting earned surplus to notes payable. On the basis of the foregoing, we would have no difficulty in finding a proper basis for

subordination. * * * " (In re *Indiana Service Corporation*, S. E. C. Holding Company Act Release No. 7054, December 14, 1946, pp. 33-4).

So too, in the instant case MOP's matching of "advances" to NOTM concurrently with the payment of NOTM dividends to MOP was designed to convert "earned surplus" to "notes payable".

Despite the decisions in the *Deep Rock* case, the *Commonwealth* case, and the clearly articulated position of the S. E. C., the Circuit Court of Appeals for the Eighth Circuit refused to subordinate the MOP Claim. Such a conclusion, if uncorrected, will result in a serious encroachment on the protection which the above decisions extend to public investors.

POINT V

MOP's Claim against NOTM may not be allowed until NOTM has been given the protection of an independent Trustee.

MOP and NOTM have a common Trustee, Mr. Guy A. Thompson. This Trustee patently has conflicting loyalties. The performance of his duties as Trustee of MOP in pressing the MOP Claim inescapably clashes with his statutory duty as Trustee of NOTM to resist the Claim (Sec. 47a(8), National Bankruptcy Act). This conflict of interest has deprived NOTM of the full protection to which it is entitled by law, just as much as if it arose from opposing personal financial interests.

Whether the MOP Claim may be held to be valid and prior under such circumstances is a question of substantial importance in the administration of the bankruptcy laws, which should be settled by this Court.

A conflict of interest on the part of the trustee was condemned by Mr. Justice Van Devanter, who as a Circuit Judge, stated:

> "* * * the trustee's action (in not contesting a claim) was accorded undue consideration, when it is considered that * * * he was represented and presumably advised by counsel who was also representing the creditor whose claim was challenged. Of course, this ought not to have been, no matter what may have been the belief of counsel respecting its propriety. The interests of the creditor were adverse to the bankrupt estate, with the protection of which the trustee was charged, and were in conflict with the interests of others who were represented by the trustee." *In re Stern,* 144 Fed. 956, 959 (C. C. A. 8th, 1906).

This principle applies no less to the instant case. It was not observed by the present Court of Appeals for the Eighth Circuit.

The lack of an independent NOTM Trustee was especially harmful since the MOP Claim involved parent-subsidiary transactions, which have been held by this Court to be "presumptively fraudulent" and to require vigorous judicial scrutiny before allowance.

> *Corsicana National Bank* v. *Johnson,* 251 U. S. 68, 90 (1919);
> *Pepper* v. *Litton,* 308 U. S. 295, 306 (1939);
> *Consolidated Rock Products* v. *DuBois,* 312 U. S. 510, 522-23 (1941).

The type of scrutiny required has been indicated by a decision of the Circuit Court of Appeals for the Fourth Circuit. That Court directed a Trustee to make a further investigation although one had already been made and the District Court had concluded that another would be futile.

> *In re Central States Electric Corp.,* 143 F. (2d) 684 (C. C. A. 4th, 1944).

The Court insisted upon:

> "* * * an investigation of the most complete and thorough-going character, with opportunity to examine under oath those who had knowledge of the corporation's affairs * * * to the end that all the processes of discovery provided by law might be fully used" (143 F. [2d] at 686).

The common Trustee in the case at bar indicated in the District Court that he did not feel the MOP Claim was especially important; he testified that he always thought that the Claim was "washed out in the Plan, and would be washed out in any Plan" (R. 645). Accordingly, he did not announce whether or not he regarded the MOP Claim as valid until some time after the hearings had commenced in the District Court (R. 646). Previously during the hearings, the Trustee's counsel, who had served in that capacity for many years, was unable to tell the Court the Trustee's attitude on the Claim (R. 392-3).

The failure of the NOTM Trustee to oppose the MOP Claim has not been offset by the efforts of petitioner and other public bondholders. Resources available to a trustee for the purpose of investigation obviously are superior to those at the command of scattered public investors. As the accountant for petitioner testified:

> "Mr. Thompson directed me to * * * Mr. Vollmer* (who) * * * stated that they would make records available, but I was not to ask any questions of any of the employees; * * * any direct questioning would have to be done in court" (R. 495).

This is far from the "opportunity to examine under oath" and the full use of "all the processes of discovery provided by law" stressed in the *Central States Electric* case.

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* Mr. Vollmer was Executive Assistant to the Trustee (Ex. 56, R. 406).

To permit the validity of the Claim of MOP, a fiduciary, to be established in such circumstances, is to deny to NOTM the protection to which it is entitled.

POINT VI

The opinion of the Circuit Court of Appeals fails to deal with basic questions of law presented by undisputed facts.

The opinion of the Circuit Court of Appeals for the Eighth Circuit does not discuss the *Commonwealth* case, which had been argued before it, although the facts and issues in the *Commonwealth* case are strikingly identical with those in the case at bar. The opinion hardly discusses the other questions of law presented by this case.

The Circuit Court stated that it would not re-examine the facts, and reached its conclusion in reliance on the findings of fact of the District Court.

Petitioner seeks no re-examination of the facts. To a remarkable extent the facts, arising almost entirely from books of account and corporate records, are undisputed.

Thus, when a parent asserts a claim for $2,795,000 representing sums which the parent, in eleven out of thirteen consecutive quarters, advanced to its dominated subsidiary one day and of which all but $141,000 was returned to the parent in the next few days in matching payments described as dividends, the question arises whether the parent has a claim for $141,000 or for $2,795,000 or any claim at all.

Similarly, it is not disputed that $1,261,009 of the MOP Claim is based on bookkeeping entries, which MOP, shortly before bankruptcy, unilaterally wrote into the books. MOP increased NOTM's open account by $1,261,009 and, as consideration, allegedly arranged for the assignment to NOTM of uncollectible claims in the same amount. It is undisputed that the NOTM Board of Directors never

requested, consented to or ratified this transaction. No conceivable benefit could have accrued to NOTM by reason of this unjustifiable imposition by MOP.

There is no dispute about these facts. The only question is one of law. The Circuit Court of Appeals does not discuss this question of law. It is content to rely generally on a finding of good faith. We submit, however, that good faith is insufficient to transform such transactions into a valid and prior claim.

These two items alone comprise a substantial part of the MOP Claim.

Most of the balance of the Claim arises from sums advanced by a parent to its dominated subsidiary to enable it to finance an expansion program, when the subsidiary, in need of funds, was unable to borrow from the public, and was already borrowing from the parent to pay dividends in excess of earnings and for other purposes. This presents a question of law. May a parent by the facile device of denominating such sums as "advances", rather than as additional capital investments, insert a claim against its dominated subsidiary ahead of the claim of public investors?

In the *Deep Rock* case, this Court concerned itself with the question whether, on the facts before it, a District Court had abused its discretion in approving a compromise of a claim, which consisted of advances concededly for the benefit of the subsidiary.

In this case, petitioner does not ask examination of any question of discretion, or of fact.

Petitioner asks solely whether, as a matter of law, the decision on undisputed facts of the Court below, in conflict with the decisions of this Court, the Circuit Court of Appeals for the Seventh Circuit, and of the S. E. C., can stand.

Petitioner urges this Court to take jurisdiction and to determine these questions of law. The reorganization will not be delayed.

CONCLUSION

It is respectfully submitted that a writ of certiorari should be granted.

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PHILLIP I. BLUMBERG,
of Counsel.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

Nos. 452 - 454

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and others, etc.,

Petitioner,

vs.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Respondents.

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and others, etc.,

Petitioner,

vs.

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ANDREW W. COMSTOCK,

Petitioner,

vs.

GUY A. THOMPSON, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, et al.,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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of Counsel.

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IN THE

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OCTOBER TERM, 1947

Nos. [illegible]

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vs.

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Respondents.

PETITION FOR WRITS OF CERTIORARI

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners respectfully pray that writs of certiorari be issued to the United States Circuit Court of Appeals for the Eighth Circuit to review the related orders and judgments of that Court rendered in the above causes, dismissing related appeals from orders, judgments and decrees of the District Court of the United States for the Eastern District of Missouri.

Jurisdiction

Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended. The date of the related orders and judgments of the Circuit Court of Appeals for the Eighth Circuit was August 28, 1947.

The Opinions of the Courts Below

The opinion of the District Court (R. 1089)* is reported in 64 F. Supp. 64. The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. IV—29) is reported in 163 F. (2d) 358.

Summary Statement of the Case

There were four related appeals before the Circuit Court of Appeals for the Eighth Circuit in the litigation over the validity and priority of the claim of the Missouri Pacific R. R. Co. (hereinafter called MOP) against the New Orleans, Texas & Mexico Ry. Co. (hereinafter called NOTM).

* References to the transcript of the record are indicated by the letter "R." except for Volume IV thereof which is indicated by "R. IV". Arabic numerals indicate pages.

Three of these appeals were from Order No. 2604-A of the District Court below, which allowed the MOP Inter-Company Claim and overruled objections relating thereto (R. 7). These three appeals were as follows:

(a) in the name of Andrew W. Comstock (Appeal No. 13,376)

(b) in the name of NOTM, by Comstock (Appeal No. 13,377)

(c) in the name of Guy A. Thompson, Trustee of NOTM, by Comstock (Appeal No. 13,378)

The fourth appeal was that of Comstock in his own name from a subsequent order of the District Court (R. 39) denying his petition for leave to appeal from Order No. 2604-A in the name of Guy A. Thompson, Trustee of NOTM (Appeal No. 13,379).

The Circuit Court of Appeals considered Appeal No. 13,376 taken by Comstock in his own name from Order No. 2604-A, and affirmed such order on the merits. The annexed petition for certiorari relates to that cause.

The Circuit Court of Appeals dismissed the remaining three appeals (Nos. 13,377-79).

This petition for certiorari relates to these three causes. To support this petition, we rely on the annexed petition for certiorari and brief, which are herewith incorporated by reference.

It is desired to eliminate from the litigation any possible procedural question as to whether Comstock should have appealed from the order of allowance of the MOP Inter-Company Claim in the name of NOTM or in the name of the Trustee of NOTM rather than in his own.

CONCLUSION

WHEREFORE, petitioners respectfully pray that writs of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit to review the orders and judgments of that Court in the above causes; and that said orders and judgments be reversed; and that petitioners be granted such other and further relief as may seem proper.

Respectfully submitted,

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PHILLIP I. BLUMBERG,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000 principal amount of said bonds,

Petitioner,

vs.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE

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ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000 principal amount of said bonds,

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner files this Brief in reply to the Brief dated December 12, 1947, submitted by a group of respondents.

POINT I

The Petition Presents No Factual Controversy.

There is no factual controversy before this Court. The challenge of petitioner is directed solely to questions of law. We asserted this on pages 33 and 34 of our main brief; we assert it again.

Thus, a substantial portion of the claim of the Missouri Pacific R. R. Co. (hereinafter called MOP) against its

dominated subsidiary, the New Orleans, Texas & Mexico Ry. Co. (hereinafter called NOTM), is based on repeated MOP advances to NOTM which were consistently matched within one to five days by NOTM dividends to MOP in substantially equivalent amounts. These are the facts as found by the District Court (R. 19).* Finding of Fact No. 19 contains a chart of such matching loans and dividends which is in full accord with the chart presented on page 7 of our main brief. Such facts arise from extracts from the corporate accounts introduced by respondents as well as by petitioner (Ex. 75-79, 281).

Similarly, another substantial portion of the MOP Inter-Company Claim involves the bookkeeping transaction, six months before bankruptcy, by which MOP wrote up the indebtedness of NOTM to MOP by $1,261,000. These are the facts as the District Court found in Finding No. 29 (R. 22). These facts also arise from the corporate records, introduced both by respondents and petitioner (Ex. 221-5, 231-2, 240-1), and from the testimony of witnesses for respondents (R. 797, 1043).

These are but two examples of the undisputed facts presented by the case at bar. They suffice to indicate the lack of merit in respondents' contention that we present a factual controversy.

We assume the findings of the District Court. Our challenge is directed only to the legal import of these unchallenged facts.

Our position is that the courts below have decided the questions of law presented by the findings of fact in conflict with the decisions of the Circuit Court of Appeals for the Seventh Circuit in *In re Commonwealth Light & Power Co.*, 141 F. (2d) 734 (C. C. A. 7th, 1944), and of this Court in *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939).

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* References to the transcript of the record are indicated by the letter "R.", except for Volume IV thereof, which is indicated by "R. IV". References to the volumes of exhibits are indicated by the letters "Ex." Arabic numerals in all instances indicate pages.

POINT II

An Adjudication on the Merits of the MOP Claim Is Necessary.

Respondents further maintain that this case may be disposed of on either of two separate grounds without an adjudication on the merits of the MOP Inter-Company Claim. These alleged grounds are:

(a) laches; and

(b) the pledge by MOP to the Reconstruction Finance Corporation and Railroad Credit Corporation (hereinafter called RFC and RCC) of two NOTM notes representing a portion, but not the entire MOP Claim.

(a) Laches

The Circuit Court opinion demonstrates that laches does not dispose of this case.

The Circuit Court pointed out that although the District Court had expressed an opinion as to laches, the District Court

> "concluded that judicial adjudication should be made as to the debt and that the court should, and therefore it did, hear the evidence covering the whole period of management of the New Orleans by the Missouri Pacific, and it tried out the whole case and all the charges presented by Comstock on the merits." (R. IV, 21)

Similarly, the Circuit Court of Appeals gave no weight to the contention of laches and adjudicated the MOP Claim on the merits.

(b) MOP's Pledge of the NOTM Notes

Respondents also seek wholly to avoid an adjudication on the merits by reliance on the legal consequences which they would draw from the one-time MOP pledge, since redeemed, of two NOTM notes representing a portion, but not the entire MOP Claim.

The District Court expressly found that only a portion of the $10,565,227 Claim was pledged to the RFC and RCC (R. 19-21). Thus, whatever the legal consequences attributed to the pledge, an adjudication on the merits of the validity and priority of the sizable portion of the MOP Claim which was never pledged cannot be avoided. This, of itself, is a complete answer to respondents' contention.

The former pledge to the RFC and RCC does not even dispose of that portion of the Claim represented by the heretofore pledged NOTM notes. This is elementary Bills and Notes law.

(1) As between the maker (NOTM) and the payee (MOP) of these notes, it is clear that all questions with regard to the transactions surrounding their issuance remain open for determination, irrespective of transfer to a holder in due course or otherwise.

(2) Subsequent to the decision of the District Court in this case, the notes were reacquired by the payee, MOP, through its trustee, which is again the holder (R. 1155). It is settled that a payee reacquiring an instrument—even from a holder in due course—is subject to all the equities and defenses of the maker.

(3) The RFC and RCC are no longer in the case. At present no MOP creditor has succeeded to any of their rights. The District Court order authorizing payment of the RFC and RCC was incompletely stated by respondents. Such order only subrogated MOP creditors to the rights of the RFC and RCC "to the extent of their respec-

tive interests, if any, in the cash used in the purchase of" the RFC and RCC claims (R. 1157, 1165). The District Court to this date has not determined whether respondents or any other MOP creditors had an interest in such cash. Until such determination is made no creditor can be said to have any interest in the NOTM notes.

Accordingly, it is understandable why the Circuit Court did not regard the legal consequences of the MOP pledge of sufficient importance to merit discussion.

CONCLUSION

It is respectfully submitted that a writ of certiorari be granted.

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of Counsel.

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FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000 principal amount of said bonds,

Petitioner,

vs.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Respondents.

PETITIONER'S BRIEF

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Table of Abbreviations

MOP: Missouri Pacific R. R., the parent corporation asserting the Intercompany Claim in the case at bar.

Alleghany: Alleghany Corporation, owner of a majority stock interest in Missouri Pacific Railroad. It acquired control of MOP in 1930.

NOTM: New Orleans, Texas & Mexico Ry., a controlled and dominated subsidiary of MOP and the company against which MOP is asserting its Claim. MOP acquired control of NOTM in 1924.

Brownsville: St. Louis, Brownsville & Mexico Ry., the principal subsidiary of NOTM.

Beaumont: Beaumont, Sour Lake & Western Ry., another subsidiary of NOTM.

IGN: International-Great Northern Ry., a North Texas railroad regarded as a subsidiary of MOP, although stock owned by NOTM; not deemed a part of the Gulf Coast Lines.

GCL: Gulf Coast Lines, the railroad system in South Texas and Louisiana composed of NOTM and its subsidiaries, excluding IGN.

Commission: Interstate Commerce Commission.

SEC: Securities and Exchange Commission.

RFC: Reconstruction Finance Corporation.

RCC: Railroad Credit Corporation.

IN THE

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Petitioner,

vs.

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Respondents.

PETITIONER'S BRIEF

Jurisdiction

Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit was granted on January 12, 1948.

The Opinions of the Courts Below

The opinion of the District Court (R. 1089 *) is reported in 64 F. Supp. 64. The opinion of the Circuit Court

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* References to the transcript of the record are indicated by the letter "R", except for Volume IV thereof, which is indicated by "R. IV". References to the volumes of exhibits are indicated by the letters "Ex.". Arabic numerals in all instances indicate pages.

The record consists of four volumes of transcript and two volumes of exhibits.

of Appeals for the Eighth Circuit (R. IV-13) is reported in 163 F. (2d) 350.

Preliminary Statement

This case involves the validity and priority of a claim of $10,565,227 filed by the Missouri Pacific R. R. Co. (hereinafter called MOP) against its controlled and dominated subsidiary, New Orleans, Texas & Mexico Ry. Co. (hereinafter called NOTM) in joint reorganization proceedings under Section 77 of the National Bankruptcy Act, as amended.

This brief is submitted by petitioner, Andrew W. Comstock, representing himself and fourteen other public investors holding in excess of $980,000 principal amount of MOP 5¼% Secured Serial Gold Bonds.*

This class of MOP bonds is secured by MOP's pledge of 82% of the outstanding shares of NOTM's sole class of stock (Ex. 304, R. 917).

MOP seeks to insert its claim against NOTM ahead of the claims of public investors secured by such pledge.

Petitioner contends that the MOP Intercompany Claim must be disallowed, or, to the extent, if any, not disallowed, subordinated to the claim of all public investors, holding MOP 5¼% Secured Bonds.

---

* Andrew W. Comstock is the holder of $80,000 principal amount of such bonds. The names and holdings of the fourteen other public investors holding in excess of $900,000 additional principal amount of such bonds have previously been stated in these proceedings.

Comstock filed his objections relating to the MOP Intercompany Claim on behalf of himself, such fourteen other investors, and on behalf of all owners and holders of such bonds (R. 227). Comstock's objections were adopted by the Missouri Pacific R. R. Co. 5¼% Serial Bondholders Committee presently holding and representing at least an additional $315,000 principal amount of such bonds (*Interstate Commerce Commission Report*, October 15, 1947, pp. 2-3). This comprises an aggregate total of $1,295,000, or about 11½% of all such bonds publicly outstanding.

The Parties

Petitioner's interest arises out of the 82% of NOTM stock pledged as security for the MOP 5¼% Secured Bonds. The Commission has recognized that such stock is of value (R. 20835, 20955). If the MOP Claim is invalid or subordinated to the claim of such bonds, the value of the pledged NOTM stock will be greatly enhanced. Consequently, the allocation of new securities to MOP 5¼% Secured Bonds is dependent upon the judicial determination of the validity and priority of the MOP claim.

The leading respondent is the Group of Institutional Investors Holding First and Refunding Mortgage Bonds of MOP; this group represents 10% or less of such bonds. Sen. Rep. No. 432, 80th Cong., 1st Sess., pp. 22-23 (1947). This Group admitted that it had "no financial interest in the controversy revolving about" the MOP Claim, and that its interest was only to expedite a Plan of Reorganization of which it was then the leading proponent. This plan has since been returned to the Commission (Institutional Group Brief, Dist. Ct., p. 2). The Institutional Group offered the only evidence in the District Court in support of the MOP Claim.

Another respondent is the NOTM Mortgage and Income Bondholders Committee, which had similarly stated that it has "no interest" in the litigation over the Claim (R. 366).

Other respondents include MOP itself, MOP common and preferred stockholders committees, the Trustee of MOP, Alleghany Corporation, certain groups of creditors and indenture trustees.

Facts

There is remarkably little in the Record which is disputed. Almost all the evidence is documentary—taken from the books and records of MOP, NOTM and NOTM subsidiaries.

In these proceedings, MOP filed a proof of claim agains NOTM in the amount of $10,565,226.78, allegedly based o

> "cash advances for operation, interest payments, etc at various times from March, 1929, to February, 193 both inclusive" (Ex. 1, R. 402).

No steps were taken by MOP, the claimant, or on it behalf, to have such claim adjudicated or allowed. Mr Thompson—the sole trustee of MOP, of NOTM and o NOTM subsidiaries *—took no steps to oppose it.

Public investors found it necessary to assume the bur den of protecting NOTM against this claim. Petitione objected to the MOP Claim in the 1943 Interstate Commerc Commission (hereinafter called the Commission) hearing on the then pending MOP Plan. The Commission rule that the issue of the validity and priority of the MO Intercompany Claim "should be left to litigation in th courts" and that it would "assume for the purposes of thi proceeding that they (the MOP advances) are valid" (R 20842).**

Petitioner's objections relating to the MOP Claim were the subject of a separate court hearing and separat order (R. 736-737). The District Court overruled peti tioner's objections and held that the $10,565,227 clai "should be allowed" in full, together with interest at 5½% and 6%, presently aggregating in excess of $18,000,00

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* Mr. L. W. Baldwin had originally been appointed a co-truste of these roads, but resigned in 1935 (R. 76, 89). The MOP proo of claim was filed by Mr. F. P. Johnson, Vice-President of MO and NOTM, not by the MOP Trustee.

** This Plan—at the request of the Commission—was returned t it in September, 1947. The Commission has set March 23, 1948 fo a hearing on proposed plans of reorganization.

† The petitioner's objections relating to the subordination of th securities owned by Alleghany Corporation were also set for a sep arate hearing. This hearing is still pending (R. 1102-1103).

The District Court further held that the claim, so allowed, was prior to the claims of public investors holding MOP 5¼% Secured Bonds (R. 7, 30-33). Petitioner appealed. The Circuit Court of Appeals for the Eighth Circuit affirmed (R. IV, 28).

MOP Ownership of NOTM, 1924 to Bankruptcy

Under circumstances condemned by the Commission, MOP acquired majority control of NOTM from a banking syndicate in 1924 (R. 9, 11; *Control of Gulf Coast Lines by Missouri Pacific R. R.*, 94 I. C. C. 191, 199-200, 204 (1924).

The price demanded for control of NOTM was more than MOP would pay. To facilitate the purchase, the agreement between MOP and the bankers required NOTM itself to pay part of the purchase price through extraordinary cash dividends to the old NOTM stockholders amounting to $2,475,000. These were in addition to the regular NOTM dividends of $1,010,000 for the year (Ex. 140-144, 197, R. 610, 664, 555-561).

The NOTM income and surplus in 1924 were insufficient to support such dividends (Ex. 197, R. 664). To provide NOTM with the necessary ostensible surplus, a liability of almost $3,000,000 was resurrected and imposed on NOTM's principal subsidiaries—the St. Louis, Brownsville & Mexico Ry. Co., and the Beaumont, Sour Lake & Western Ry. Co.* (hereinafter called Brownsville and Beaumont respectively) (Ex. 181-185, R. 636).

The payment of these resurrected obligations did not provide NOTM with sufficient funds to pay these dividends.

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* This represented past due interest which NOTM in 1917 had "waived, cancelled and all things annulled so that neither of said companies shall hereafter be required to pay" (Ex. 180-181, R. 635).

NOTM was obliged to borrow large sums for this purpose * (R. 559-560).

To refinance its purchases of NOTM stock, MOP, in 1926, issued $13,156,000 of its 5¼% Secured Bonds to public investors. In accordance with the trust indenture under which the bonds were issued, 131,560 shares of NOTM stock were pledged by MOP as security for these bonds ** (R. 11-12).

MOP continued to acquire NOTM stock until it owned more than 93% upon bankruptcy (Ex. 177, R. 630).

From 1924 until bankruptcy, MOP dominated NOTM and NOTM subsidiaries through common officers and interlocking directorates (R. 11). MOP officers and directors immediately occupied a majority of the NOTM Board and offices. By 1929, every director and principal officer of NOTM was a MOP officer or director.

For example, until 1930, Mr. William H. Williams, Chairman of the Board of MOP with offices in New York, was Chairman of the Board of NOTM, IGN, Brownsville and Beaumont. In 1930, Mr. O. P. Van Sweringen, President of Alleghany Corporation, replaced Mr. Williams as head of all these companies and moved the Chairman's office to Terminal Tower, Cleveland, Ohio.

The other leading MOP officers such as President Baldwin, Vice-Presidents Johnson and Safford and Secretary-Treasurer Wyer all held similar positions in NOTM, IGN, Brownsville and Beaumont (Ex. 39-44, R. 405-406).

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* Nevertheless, in NOTM's Annual Report for 1924 to the Commission, NOTM denied that it had borrowed to pay dividends (Ex. 197, R. 664).

** By bankruptcy, the amount of such bonds outstanding and of the stock pledged had been reduced to $12,140,000 and 121,460 shares respectively (Ex. 304, R. 917). Subsequently, the MOP Trustee, pursuant to Court order, purchased $895,000 of these bonds, leaving a total of $11,245,000, presently publicly outstanding (MOP Thirtieth Annual Report (1946), p. 11).

Early in 1929, Alleghany Corporation commenced large scale stock market operations in MOP securities, resulting in the acquisition of majority control of MOP by April, 1930. When Mr. O. P. Van Sweringen took Mr. Williams' place as Chairman of the Board of these five roads, seven of his associates replaced Mr. Williams' associates on the MOP and NOTM Boards (Sen. Rep. No. 714, 77th Cong., 1st Sess., Part 2, pp. 560-564 (1941); Ex. 26-61, R. 405-406, 869).

Throughout its period of control, MOP managed the financial affairs of NOTM for its own benefit. NOTM suffered from the lack of an independent management in the dividend policy imposed by MOP, in the shifting of indebtedness on the MOP books to NOTM, in the huge increase of NOTM indebtedness, in the failure to make provision for sound financing of the NOTM expansion program and in the acquisition with NOTM funds of North Texas "feeder" railroad lines for the benefit of MOP and IGN. All these financial transactions are reflected in the MOP Claim.

The Dividend Policy Imposed on NOTM

Under MOP control, NOTM was compelled to pay dividends in each and every quarter from 1925 through 1931, aggregating $7,267,000. Of these dividends, the sum of $6,473,000 went to MOP (Ex. 177, R. 630, 433). MOP caused NOTM to pay these dividends although NOTM was without funds and already borrowing for an extensive expansion and improvement program.

(a) NOTM Dividends to MOP Exceeded NOTM Earnings

NOTM dividends substantially exceeded income. In only two * of the seven years from 1925 through 1931 was NOTM's income adequate to pay the annual dividends exacted by MOP (Ex. 195, R. 663). This is considering NOTM as a separate corporate entity.

The consolidated earnings of NOTM and its Gulf Coast Lines subsidiaries were even less favorable. Total consolidated earnings were less than NOTM dividends in each year from 1927 to bankruptcy. During this period, NOTM paid twenty dividends totalling $5,190,000 against consolidated earnings of $1,151,000 (Ex. 301, R. 914). Over the full seven-year period, NOTM dividends totalled $7,267,000 against consolidated earnings of $5,481,000 (Ex. 301, R. 914).

NOTM dividends were not merely in excess of income. Mr. Wyer—former Treasurer of MOP and NOTM and the principal witness in support of the MOP Claim **—admitted before the United States Senate Committee on Interstate Commerce that 1931 NOTM dividends were paid out of capital.†

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* Without the unpaid paper dividends from Brownsville which the Commission later condemned and directed NOTM to write off insofar as then still unpaid, NOTM suffered a substantial loss in 1931 although the books show an ostensible profit for the year (Ex. 62-64, 195, R. 420-422, 663).

** The Institutional Group delayed the presentation of their case so that Mr. Wyer could testify (R. 734). Mr. Wyer remained in the court-room during the proceedings below, advising respondents (R. 458).

† *Hearings before Sub-Committee of Senate Committee on Interstate Commerce* pursuant to S. Res. 71, 75th Cong., 1st Sess., Part 12, p. 5296 (1938); (R. 296). Judicial notice may be taken of these official reports. *Arizona* v. *California*, 283 U. S. 423, 453-454 (1931).

(b) Matching of Simultaneous MOP Advances to NOTM and NOTM Dividends to MOP

From the fall of 1928 until bankruptcy—and largely as a result of previous large dividend payments to MOP—the cash position of NOTM was impaired. NOTM lacked funds for its expansion and improvement program and to meet its bond interest, principal and interest on equipment trust notes, and sinking fund obligations (Ex. 281, R. 900).

MOP, nevertheless, forced NOTM to continue regular dividends through the end of 1931.

Commencing in the fall of 1928, NOTM was able to pay such dividends only as a result of matching advances from MOP (Ex. 281, R. 900; Ex. 75-79, R. 453). These MOP advances were paper transactions. MOP advanced sums to NOTM with one hand and took them back almost simultaneously by way of dividends with the other. Most of these paper advances were accomplished by checks drawn by an officer of MOP and then endorsed by the same person acting as an officer of NOTM (Ex. 83, 239; R. 455, 791). These advances are now included in MOP's Claim.

One MOP directive on the same day credited NOTM with an "advance" from MOP and credited MOP with a matching dividend from NOTM. Mr. Wyer, Treasurer of MOP and NOTM, wrote under the MOP letterhead to J. P. Morgan & Co., a depository for both MOP and NOTM. In one paragraph, Mr. Wyer directed the Morgan firm to credit NOTM with an advance of $300,000 on November 29, 1930. In another paragraph, Mr. Wyer advised the Morgan firm to credit MOP on that date with an NOTM dividend in the amount of $243,360 (Ex. 84, R. 456). MOP was thus credited with dividends from NOTM two days before December 1, 1930, the date set for payment (Ex. 281, R. 900).

Without such paper advances, NOTM could not have paid dividends (Ex. 75-79, R. 453). For example, on February 28, 1930, the NOTM Treasurer's account had a cash balance of only $13,565, although on the following day the

NOTM quarterly dividend of $259,576 was payable. On February 28 in New York City, Mr. O. B. Huntsman, as Assistant Secretary-Treasurer of MOP, issued a check for $260,000 to NOTM, and then as Assistant Secretary-Treasurer of NOTM endorsed it for deposit in the NOTM account. The NOTM quarterly dividend of $259,576 was paid on the next day with $242,072 going back to MOP (Ex. 75-83, 239, R. 453, 455, 791).

These are typical examples of the matching of advances from MOP to NOTM and dividends from NOTM to MOP. This matching was not an isolated transaction. It followed a consistent pattern. As the following chart shows, this matching was repeated in eleven out of thirteen consecutive quarters from November, 1928 until NOTM paid its last dividend in November, 1931 (Ex. 75-81, 177, 281, R. 19, 453, 630, 900).

	MOP "Advance" to NOTM	*NOTM Dividend to MOP*	*Date of MOP "Advance"*	*Dividend Followed "Advance"*
	$ 300,000	$ 233,231	Nov. 30, 1928	1 day later
	250,000	234,237	Feb. 28, 1929	1 " "
	275,000	239,429	Aug. 31, 1929	3 days "
	310,000	241,529	Nov. 29, 1929	2 " "
	260,000	242,072	Feb. 28, 1930	1 day "
	275,000	242,212	May 31, 1930	1 " "
	300,000	243,360	Nov. 29, 1930	Same day
	75,000	243,510	Feb. 25, 1931	3 days later
	200,000	244,387	May 27, 1931	5 " "
	250,000	244,527	Aug. 29, 1931	2 " "
	300,000	244,527	Nov. 27, 1931	4 " "
OTAL	$2,795,000	$2,654,000	$2,855,333	TOTAL DIVIDEND
VERAGE ADVANCE"	$ 254,091		$ 259,576	EACH NOTM DIVIDEND

Although MOP advanced to NOTM $2,795,000, it received back $2,654,000 in dividends within a few days. The total net advance from MOP to NOTM was only $141,000 ($2,795,000 less $2,654,000).

Yet the Courts below allowed MOP its claim of $2,795,000, plus interest of about $2,000,000,* aggregating about $4,795,000, for this net advance of $141,000. This constitutes a return of over 3400% to a fiduciary parent.

(c) Dividends Drained from Brownsville to Make Possible NOTM Dividends to MOP

Without the paper advances from MOP, payment of NOTM dividends would have been impossible. Without paper dividends drawn from NOTM's principal subsidiary, Brownsville, the ostensible legal basis for declaration of NOTM dividends would have been lacking.

The NOTM quarterly dividends were declared some weeks before the end of each quarter (Ex. 173, R. 617). Several weeks after the close of the quarter, NOTM earnings for the preceding quarter were ascertained. Such earnings were generally insufficient to cover the previously declared NOTM dividend. Consequently, MOP directed Brownsville to declare dividends expressly to cover the NOTM deficits resulting from such dividends.

On at least seventeen occasions from 1926 to 1931, following directives from Mr. Baldwin in St. Louis to Mr. Safford, in Houston, such Brownsville dividends were declared in amounts identical to the dollars and cents required to bring quarterly NOTM income up to the $259,575.75 dividend for such quarter previously paid by NOTM (Ex. 111-112, 123-134, 172, 206; R. 569-601, 616 674).

Brownsville could not make cash payment of its dividends at any time after 1926. Such paper dividends did

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* All computations of interest in this Brief have been made at the rate of 5½% per annum from 1933 to 1946, the date of the District Court order.

not improve NOTM's cash position. Thus, NOTM from 1928 through 1931 was caused to borrow $2,795,000 for dividends and several additional millions for other purposes (Ex. 281, R. 900).

Dividends reached a climax in 1931. That was almost a catastrophic year for NOTM.

On April 14, 1931, Mr. Baldwin met with Mr. Van Sweringen and Mr. Wyer in Cleveland at a Brownsville Executive Committee meeting (R. 583-584). Two days later, Mr. Baldwin wrote from New York to Mr. Safford in Houston:

> "* * * I want to impress upon you *again* the fact that although it may necessitate a much more drastic curtailment of expense than you have ever had or anticipated, the NOT & M *must* earn and pay its dividend this year and have $100,000 left in addition * * *" (Ex. 135, R. 601). (Italics added.)

Mr. Safford replied that 1931 NOTM earnings were estimated at only 40% of the regular dividend, despite the fact that expenses were "very close to the irreducible minimum unless we make some further drastic reduction in service". Mr. Safford continued that the NOTM "program for Maintenance of Equipment" had been cut to "the lowest expenditure * * * since 1924". He concluded: "* * * We have felt that we have gone as deeply into these expenditures as we could without impairing the standard of service" (Ex. 135-137, R. 601).

Nevertheless, MOP compelled NOTM to pay its dividends regularly through 1931. Brownsville was used to provide the ostensible basis for such NOTM dividends.

On June 7, 1931, Brownville was caused to declare dividends of $655,079 (Ex. 113-119, 206, R. 576, 579, 674).

This was still not enough. Further correspondence passed between Mr. Baldwin and Mr. Safford (Ex. 172, R. 616).

On July 11, 1931—less than one month later—Brownsville, at MOP's dictation, declared a further dividend of 700%, amounting to $3,500,000, an amount greater than the sum of all Brownsville dividends for the preceding fifteen years * (Ex. 106, 206, R. 564, 674).

These Brownsville 1931 dividends totalling $4,155,000 were never paid in full ** (Ex. 102, R. 519, 415).

On auditing the NOTM accounts, the Commission held that the interlocking directors and officers knew, at the time, that these Brownsville dividends could not be paid, and that their inclusion in NOTM income was a violation of the Commission regulations. Accordingly, in 1936 the Commission disapproved the dividends and directed NOTM to write them off insofar as they were then still unpaid. NOTM complied (Ex. 62-64, R. 420-422).

Brownsville 1931 dividends were necessary for the continuance of NOTM dividends to MOP. NOTM's 1931 losses and charges to surplus would otherwise have impaired NOTM capital by $800,000 (Ex. 195, R. 663).

These 1931 dividends were declared though Brownsville suffered a deficit for the year and though its current liabilities exceeded current assets (Ex. 305, 309, R. 923, 927). The 1931 and earlier dividends aggregating $8,500,000 were declared though Brownsville's long-past-due indebtedness to NOTM for fuel, materials and supplies had been steadily mounting from less than $1,000,000 in 1924 to over $9,693,000 by 1931 (Ex. 102, 103, 189, 206, R. 519, 538, 660, 674).

Although Brownsville paid all its pre-1931 dividends to NOTM, Brownsville past-due bills to NOTM for essential supplies were left unpaid.

Such selectivity of payment had significant results. Declaration and payment of a Brownsville dividend increased

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* At the time these dividends were declared, figures were already available revealing that Brownsville income from January 1 to May 31, 1931, was running 55% lower than 1930 (Ex. 312, R. 929).

** Indeed the inability to pay such dividends was the ostensible reason for the Browsville petition for reorganization under Section 77 (R. 444-445).

NOTM's paper income and surplus and made possible dividends to MOP. Payment of these past-due debts to NOTM would not have affected NOTM income or surplus.

(d) The Financial Plight of MOP and Alleghany

The Brownsville 1931 dividends occurred against the following background.

MOP was laboring under a swollen debt structure.

From March, 1927 to February, 1931, MOP sold to the public $206,000,000 of First and Refunding Mortgage Bonds * (Ex. 270-273, 275, R. 888). In 1927, MOP sold $95,000,000 of such bonds; in 1928, $25,000,000; in 1930, $25,000,000; and in 1931, $61,200,000 of such bonds (Ex. 271-275, R. 888). In addition, in 1931, MOP borrowed $23,400,000 in short term loans from J. P. Morgan & Co. (Sen. Rep. No. 25, 76th Cong., 3d Sess., Part 9, p. 14).

To accomplish the flotation of such new bonds, a showing of substantial MOP earnings was required. In addition, MOP annual carrying charges had increased by $7,500,000 in a decade (Sen. Rep. No. 25, 76th Cong., 3d Sess., Part 7, p. 19).

The predecessor of respondent Institutional Group stated that such "capitalization top heavy with debt" was the "major cause of the (MOP) bankruptcy" (*Senate Committee Hearings, supra,* 75th Cong., 1st Sess., Part 13, p. 5824 (1939)).

In addition, in the year ending July, 1931, $4,000,000 of MOP funds were used by Alleghany to purchase MOP stocks and IGN bonds. "While these purchases tended to bolster the market price of Alleghany securities, the effect on the carrier (MOP) was disastrous" (Sen. Rep. No. 25, 76th Cong., 3d Sess., Part 11, p. 34).**

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* A substantial portion of these were used for refinancing both long and short term debt (Ex. 275, R. 888).

** This matter is treated more fully in footnote at page 48, *infra.*

MOP's position was further weakened in 1930 and 1931 by Alleghany's conduct in imposing "improvident" contracts on MOP involving a cash expenditure of $3,200,000 during this period.*

Under these burdens MOP's financial position had become critical by 1931. Traffic, moreover, was declining and the railroads of the country were in the midst of the depression (*Id.*, Part 11, p. 5).

As of December 31, 1930, MOP's current liabilities exceeded its current assets by more than $4,500,000. At the end of 1931, current liabilities exceeded current assets by almost $6,000,000 (*Id.*, Part 11, p. 5).

Indicative of MOP's straitened condition was the decision of the MOP Board of Directors at meetings in Terminal Tower, Cleveland, Ohio, on May 14 and July 14, 1931, to authorize the MOP Chairman (Mr. O. P. Van Sweringen) or MOP Treasurer (Mr. Wyer) to borrow a total of $7,300,000 to meet MOP's needs for current requirements and dividends (Ex. 156-160, R. 613).

MOP was further subjected to heavy pressure from its parent, Alleghany Corporation. Alleghany's position in 1931 was also serious. Its income from sources other than MOP was declining. Moreover, its control over MOP itself was at stake.**

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* *In re Missouri Pacific R. R.*, 13 F. Supp. 888 (E. D. Mo. 1935). Payments under this transaction, and the $4,000,000 stock purchase campaign, were concealed (51st Annual Commission Report (1937), pp. 27-28; Sen. Rep. No. 25, 76th Cong., 3d Sess., Part 11, pp. 34, 30-33).

** The Alleghany holdings of MOP securities had been pledged as the principal security for an issue of Alleghany Bonds. Under the Alleghany trust indenture, the right to vote the MOP and other pledged securities passed to the indenture trustee if the pledged securities fell below 150% of the face amount of Alleghany bonds outstanding.

Alleghany thus was vitally concerned in the earnings reported by MOP, lest a drop in MOP income result in a decline in MOP security prices. Such a decline would depress the collateral below the critical 150% mark, and Alleghany would lose control of MOP (Sen. Rep. No. 25, 76th Cong., 3d Sess., Part 9, pp. 5-6).

The needs of MOP and Alleghany persisted until bankruptcy (Ex. 281, R. 900). Even as late as two days before MOP and NOTM filed petitions under Section 77, MOP compelled NOTM to pay $175,000 to MOP (Ex. 239, R. 791).

$7,800,000 of the MOP $10,565,227 claim arose during the period of Alleghany control, *i.e.*, after May, 1930 (Ex. 239, R. 754, 791).

Claim of $1,261,009 Saddled on NOTM

Included in the MOP Intercompany Claim is an item of $1,261,009. This represents a bookkeeping transaction to which NOTM has never consented and from which NOTM has not received a single penny to this date. Although described in the proof of claim as a "cash advance", no cash changed hands (Ex. 1, 240-241, R. 402, 794).

This purported obligation was saddled on NOTM through a series of journal entries in October 1932—in the darkest days of the depression and in the shadow of bankruptcy (Ex. 221-225, 231-232, 240-241, R. 701, 706, 794).

In October, 1932, MOP had unsecured claims against two subsidiaries, NOTM and IGN (Ex. 145, 155, R. 610, 613). In MOP System affairs, IGN was not regarded as a subsidiary of NOTM (R. 603).* The financial position of NOTM was much stronger than that of IGN.**

MOP—in need of loans from the Reconstruction Finance Corporation and the Railroad Credit Corporation (hereinafter called RFC and RCC)—sought to improve its position by shifting debtors. MOP moved the accounts of its subsidiaries like men on a chessboard.

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* It should be noted that NOTM itself was acquired primarily because of MOP's desire to obtain control of IGN (R. 603-604).

** Thus, the first Plan made allocations to NOTM stockholders, but none to IGN general creditors (R. 20879, Appendix C).

MOP arbitrarily increased its claim against NOTM by $1,261,009. MOP simultaneously reduced its claim against IGN by the same amount.

As alleged consideration for this write-up of its Claim, MOP planned to have IGN assign to NOTM $1,261,009 of uncollectible claims which IGN had against certain NOTM subsidiaries—IGN sister companies. NOTM had not previously been liable for these claims.*

It was known at the time that these IGN claims were uncollectible.** Mr. Eckert, auditor of NOTM, so testified (R. 797, 1043).

Mr. Eckert, the then NOTM auditor and one of the few NOTM officers who was not also an officer of MOP, did not know all the details of this transaction until the District Court hearing, twelve years later (Ex. 52, R. 406). He testified:

> "* * * I have not seen any of these (journal) entries at all, this is news to me" (R. 702).

This transaction followed the usual pattern of MOP decisions with respect to the financial affairs of its subsidiaries.

Mr. Wyer, in Cleveland, wrote a directive on MOP stationery to Mr. Baldwin, pointing out that "the Chairman (Mr. Van Sweringen) has requested me to arrange this matter", and directing what was to be done. The MOP Board of Directors adopted Mr. Wyer's resolution, and the accounts were shifted (Ex. 221, R. 701, 703).

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* The only possible claim that IGN may have had against NOTM amounted to $64,129. This was described as "unmatured interest accrued". The nature of this item was never disclosed (Ex. 223, R. 701). Against this, NOTM was not permitted to set off IGN's indebtedness to it in the sum of $41,115 for past-due interest on IGN 6% Adjustment Mortgage Bonds held by NOTM (Ex. 179, R. 632).

** For example, about $800,000 of these claims was due from a road, San Antonio, Uvalde & Gulf Ry., that had been in default for years on its first mortgage bond interest, which default totalled almost one million dollars at this time (Ex. 179, 223, R. 632, 701).

There was no pretense of corporate action by either NOTM or IGN. Corporate requirements were ignored. The MOP Board unilaterally sought to increase NOTM's indebtedness to it.

In this manner NOTM, with $19,000,000 of past-due indebtedness of its subsidiaries, most of which was uncollectible, was saddled with an additional $1,261,009 of uncollectibles (Ex. 69, 94, R. 432, 486).

Acquisition of North Texas "Feeder" Lines

The record contains evidence of other examples of financial burdens imposed on NOTM by MOP for the benefit of MOP.

NOTM was compelled to borrow and expend more than five and one-half million dollars to acquire North Texas "feeder" lines * for the benefit of MOP and IGN, and not for NOTM (Ex. 193, 233, R. 662). Some of these "feeder" roads do not even connect with NOTM or any of the Gulf Coast Lines, but tie in only with IGN (Ex. 213, R. 605-606, 678). These lines are on IGN territory on the route to St. Louis. As the maps in the record show, they are many miles to the north and well off the route of the Gulf Coast Lines (Ex. 213, R. 678).

It was recognized,** as the Commission found, that these five "feeder" lines "were really acquired for the benefit of

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* These include the Asphalt Belt Ry., Asherton & Gulf Ry., the San Antonio Southern Ry., the San Antonio, Uvalde & Gulf Ry. and the Sugar Land Ry.

The cost of the Asphalt Belt Ry. Co. is given as $310,000 and that of the San Antonio Southern Ry. Co. as $600,000 (Ex. 193, 233, R. 662). Book value given to the Asherton & Gulf Ry. Co. securities was $439,000; the San Antonio Uvalde & Gulf Co., $3,038,000 and the Sugar Land Ry. Co., $1,163,000 (Ex. 98, R. 488).

** This had been recognized by the predecessor of respondent, Institutional Group (First Amended Plan of Reorganization, Protective Committee for MOP First and Refunding Bonds, p. 61; R. 20882).

the entire (MOP) system, * * * they have usually been operated at a deficit since acquisition" (*Missouri Pacific R. R. Reorganization*, 239 I. C. C. 7, 71 (1940)).

Mr. Wyer, himself, pointed out that such roads ran at a loss (R. 873).

The District Court, nevertheless, found that the "record contains no evidence tending to show that" such acquisition was "disadvantageous" to NOTM (R. 10).

Such expenditures for new roads were in addition to the millions of dollars of NOTM funds spent in the acquisition of other Texas roads in NOTM territory (Ex. 98, 193, 233, R. 10, 488, 662).

NOTM'S Inadequate Capitalization

Under the policies imposed by MOP, the resources of NOTM proved inadequate for the conduct of its business.

NOTM's resources were weakened by the $2,475,000 extraordinary dividends in 1924, declared as a part of the deal by which MOP acquired NOTM. Thereafter under MOP control, NOTM was further drained of funds by dividends well in excess of earnings.

In that framework, MOP compelled NOTM to embark on an expansion and improvement program.

In Mr. Wyer's elaborate description of the Baldwin Improvement Program, he made it completely clear that such expansion was as an integral part of the MOP System "which was being built up and expanded in a most unusual way". Mr. Wyer showed that the funds for such expansion were raised solely in "financing cycles" resulting in a tremendous increase in debt (R. 880, 888-896, 930-931).

As long as possible, these loans were refunded by public bond issues, with NOTM total bonded indebtedness climbing from $29,382,000 in 1924 to almost $43,000,000 four years later (Ex. 71, R. 432).

After the spring of 1928, NOTM was no longer able to borrow from the public (R. 1023-1024).* About the same time, NOTM became chronically short of cash working capital.** Its need for further borrowing persisted.

Under MOP control, NOTM annual interest charges almost doubled, rising from $1,463,000 in 1925 to $2,685,000 in 1932 (Ex. 99, R. 488). At the same time, NOTM consolidated income declined precipitously from an annual average of $2,400,000 for the years 1924 to 1926 to an average of $230,000 for the years 1927 to 1931 (Ex. 301, R. 914).

Despite NOTM's needs, MOP did not invest one additional penny in NOTM. The shares of NOTM stock acquired by MOP were all purchased from New York bankers or on the market; NOTM received no additional capital.

MOP's Domination of NOTM

The fiscal affairs of NOTM were directed by MOP officers and directors more than 1,000 miles from the nearest area served by NOTM.

The NOTM financial offices were not located in the NOTM main offices in Houston, Texas, but in New York City, in the financial offices of MOP. Subsequently, upon acquisition of MOP by Alleghany, the offices were transferred to Terminal Tower, Cleveland—the headquarters of the Van Sweringen-Alleghany empire (R. 590-597). These were the

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* This was true not only because of changed market conditions. The NOTM First Mortgage Bond Indenture, in effect, made it impossible to sell any additional first mortgage bonds to the public.

** NOTM year-end cash which had averaged $992,000 during the early years of MOP control (1925 to 1927) dropped sharply to an average of $209,000 from 1929 to 1932 (Ex. 69, R. 432).

offices in which the decisions on NOTM financial matters were made * (R. 892).

Every meeting of the Board and Executive Committee of NOTM and Brownsville ** was held in New York City until control passed to Alleghany. After April 29, 1930, meetings were held in Terminal Tower, Cleveland (Ex. 173, 188, R. 617, 638).

It was in the New York offices that "the minutes of the meetings of the various companies, programs for the directors" were prepared. Problems such as whether NOTM was to borrow to pay its dividends, were described as the "requirements in the East" (R. 593-594).

The New York and Cleveland offices were in complete charge of the NOTM treasurer's bank accounts (R. 593).

The MOP officers in New York prepared plans, which were kept in MOP files, as to the programs to be imposed on NOTM. Thus, in 1929, Mr. Wyer, at the direction of the MOP chairman, estimated at the start of the year, the amounts to be lent to NOTM in order to enable NOTM to pay dividends to MOP throughout the year (Ex. 280, R. 896). Mr. Wyer estimated that the "advances required from" MOP would be $1,119,000 and that NOTM's "cash requirements" would include $1,038,000 for dividends. Mr. Wyer introduced this estimate as "typical" of the activities of the MOP New York office (R. 896-898).

The only contact that the NOTM main office in Houston, Texas, had with the NOTM financial office in New York and then Cleveland was through the MOP office at St. Louis (R. 500).

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* E.g., the MOP Executive Committee met in New York at 11 A. M. on February 4, 1930. The NOTM Executive Committee met at 11.15 A. M. on the same day in the same place; precisely the same people were present at both meetings (Ex. 151, 152, R. 611-612).

** One Brownsville meeting was held in St. Louis.

Mr. Baldwin, president and operating head * of MOP a NOTM, with offices in Saint Louis, testified that his re tions with the financial offices in the East were:

> "• • • quite indefinite. Largely being a good fell I guess • • •" (R. 597).

Indeed, Mr. Eckert, the NOTM general auditor, not know how the NOTM financial office, in charge of Wyer, even functioned. Mr. Eckert never saw or check the books kept in the NOTM financial office. To the exte these books were checked at all, it was done by MOP vi president, F. P. Johnson, and the MOP St. Louis off (R. 497-502, 590-595).** Similarly, Mr. Johnson and MOP St. Louis offices issued the instructions which we followed by the NOTM bookkeeping staff in Houston (499, 1022, 1050-1051).

The long series of letters exchanged between Mr. Ba win in St. Louis and Mr. Safford in Houston with resp to dividends is demonstration of the manner in wh MOP officers determined the NOTM and Brownsville di dend policy (Ex. 120, 123-134, 137-140, R. 579, 581, 5 601, 610-616).

The expansion program imposed on NOTM was a cision by MOP officers as a part of the expansion of MOP system. To these officers, such as Mr. Wyer, NOT had no separate existence; it was "simply a part of Missouri Pacific System" (R. 930).

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* The Senate Committee described the operating officials of MOP System as "mere supernumeraries". "Even the highest r road executive realized that they were little more than messeng for the holding (Alleghany) company interests" (Sen. Rep. No. 76th Cong., 3d Sess., Part 10, p. 30).

Mr. Baldwin acknowledged that Mr. Van Sweringen was "boss", and that when Mr. Van Sweringen gave him orders "always carried them out" (*Senate Committee Hearings, sup* 75th Cong., 1st Sess., Part 12, p. 5468).

** Some of the books kept in the eastern financial offices were ne audited by the MOP St. Louis office (Sen. Rep. No. 25, 76th Co 3d Sess., Part 11, pp. 17-18).

To finance this expansion program, NOTM had to borrow large sums. This was the policy determined by MOP, and the form such borrowings took—the financing cycles of Mr. Wyer—was determined by MOP officers and cast in the mold of the financing of the vast increase of the debt of MOP itself (R. 895).

When MOP made advances to NOTM, the same person drew the check as an officer of MOP and endorsed it for deposit as an officer of NOTM (Ex. 83, 239, R. 455, 791).

When NOTM made payments to MOP on the open account, MOP officers decided the allocation between principal and interest. The NOTM books were kept accordingly (R. 1022, 1045, 1050-1051).

The fundamental decision whether funds invested by MOP in NOTM should be denominated "advances" or additional stock was the decision of MOP.

In short, every financial act of NOTM was the act of MOP, and MOP determined the form in which intercorporate financial transactions were recorded on the books.

NOTM Open Account Debts Transmuted into Notes

Until a few weeks before bankruptcy, almost all NOTM "indebtedness" to MOP—whether cash advances or paper transactions—were recorded as open book accounts on the records of MOP. When MOP's financial position became increasingly desperate, and MOP could no longer obtain funds by the sale of additional securities or by borrowing from banks, it sought to obtain loans from the RFC and RCC.

For such loans the RFC and RCC required all the collateral on which MOP could lay its hands. When the bottom of the barrel of available collateral was reached in 1933, MOP arranged for the transmutation into two demand notes of open accounts constituting a large portion, but not all, of the MOP Claim. These notes were signed by Mr. William Wyer, as Treasurer of NOTM, and delivered to himself as Treasurer of MOP (Ex. 51-52, 348-349, R. 406).

The larger of these notes, for $7,456,726, was issued four weeks before bankruptcy. It and the other note *—issued shortly before—were immediately pledged, together with other collateral, by MOP to the RFC and RCC (R. 30, 86). $610,000 of the advances comprising the Claim were never pledged.

In *ex parte* proceedings, a division of the Commission hurriedly approved the issuance of the larger note, the RFC and RCC loans ** and the pledge to the RFC and RCC (*Missouri Pacific R. R. Reconstruction Loan*, 189 I. C. C. 286, 342, 549; *New Orleans, Texas & Mexico Ry. Notes*, 189 I. C. C. 600 (1933)).

After the District Court decision and before the Circuit Court decision in the instant case, the RFC and RCC claims against MOP were paid, pursuant to Court order, and the RFC and RCC claims and collateral, including the two NOTM notes, were surrendered to the Trustee of MOP (R. 1155, 1164). The findings with respect to the RFC and RCC became moot, and the RFC was stricken as a party to these proceedings † (R. 1348).

Physical Operations of MOP and NOTM

The physical operations of NOTM have no necessary relation to MOP's financial mismanagement. Considerable testimony was, nevertheless, presented by the Institutional Group in the District Court in an effort to demonstrate that the physical condition and operations of NOTM had been improved during the years of MOP control.

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* This note had been issued for $2,498,500, the maximum amount permitted without consent of the Commission under Section 20(a) of the Transportation Act.

** This application was submitted on December 23, 1932, and decided January 4, 1933. Only MOP appeared (R. 110). MOP representatives included Mr. Wyer and Mr. Herbert Fitzpatrick, the close friend and adviser of Mr. O. P. Van Sweringen (Senate Committee Hearings, *supra*, 74th Cong., 2nd Sess., Part 2, p. 582).

† The RCC never was a party.

The Institutional Group put in evidence testimony and elaborate exhibits covering the operational history of NOTM from 1907. The District Court's findings were in accordance with such testimony (R. 13-17).

Under MOP control, a great improvement in the physical condition of the road had been achieved. This was paid for by a large increase of NOTM indebtedness (R. 13; Ex. 71, R. 432).

MOP engaged in an ambitious expansion and improvement program lasting from 1923 to 1930. This included the acquisition of the Gulf Coast Lines, IGN, and the Denver & Rio Grande Western, all of which were considered necessary for the strategic development of the MOP System (R. 10-11).

The District Court found that "road and equipment" had been "very substantially improved" (R. 13).

The District Court further found that MOP assistance had enabled the Gulf Coast Lines to maintain their competitive traffic position in the Rio Grande Valley and to reduce the schedule running time from the Rio Grande Valley to St. Louis. Under MOP control, the division of revenue received from perishable freight and arrangements for refrigerator cars improved (R. 14-16). The relation of freight car loadings to that of Class I railroads generally improved. Freight loadings from competitors of MOP declined after 1924. Receipts from MOP and IGN increased (R. 16-17).

Messrs. Rodgers, Kirkpatrick and Brown, witnesses for the Institutional Group, testified that an improvement in traffic and in the condition of locomotives, freight and passenger cars, and road had occurred during this period (R. 814-867, 933-954). Some of this testimony emphasized by the Institutional Group included: an increase in the percentage of creosoted ties, and of the tonnage of new rail laid per annum (although the tonnage of rail relaid declined), and a substantial decrease in the number of locomotive failures per mile (Ex. 249-251, R. 815, 829).

Additions and betterments included new lines and extensions, rail renewal projects, ballasting projects, bridges, trestles and culverts, and new station facilities (Exs. 255, R. 832).

Nature of the Proceedings Below

These proceedings involve the validity and priority of the claim asserted herein by MOP against NOTM. The litigation admittedly involves the first judicial determination of MOP's Claim (R. IV, 20-21). This is not a proceeding brought by NOTM to recover anything from MOP.

In the District Court, petitioner Comstock originally petitioned for leave to file objections to the MOP Claim in the name of the Trustee of NOTM (R. 247). He also filed objections to the then pending MOP Plan; of these, objection No. 19 and related objections repeated the objections to the MOP Claim contained in the first petition (R. 227, 232-233).

Counsel for respondents contended that the issues raised by these two documents of petitioner were identical, and that petitioner should be compelled to litigate his objections to the Claim in connection with the hearings on objections to the Plan (R. 338-339, 365-367). The District Court agreed (R. 367).

The validity and priority of the MOP Claim, attacked in Comstock's Objection No. 19, were thereafter the subject of a hearing by the District Court—separated from the hearings on the Plan of Reorganization—and were determined by a separate order, from which a separate appeal to the Circuit Court of Appeals was taken (R. 1, 7, 378). The proceedings were separated so that such separate appeal could be taken (R. 731).

The District Court held that the MOP Claim "should be allowed" and that Comstock's "objection to the claim of the Misouri Pacific against the NOTM should be overruled" (R. 31-34, 1111). The Circuit Court affirmed the District Court, holding that "the claim of Missouri Pacific was properly allowed" (R. IV, 27).

This is litigation * over such orders of allowance and is independent of any particular plan of reorganization.

The litigation over the MOP Plan of Reorganization pending at the time of the hearing on the MOP Claim ran its separate course. The District Court approved the Plan and appeals were taken by various parties to the Circuit Court of Appeals for the Eighth Circuit.

Respondents herein—such as the Institutional Group and the Alleghany Corporation—who had sponsored the Plan before the Commission and in the District Court abandoned the Plan. They informed the Circuit Court of Appeals that the Plan had become "unfair and inequitable". Together with other parties, they requested its remand to the Commission.

At the suggestion of the Circuit Court, the Commission submitted a brief; it urged the Court to remand the Plan for "reconsideration and revision". The Court did so on September 9, 1947. *Wright* v. *Group of Institutional Investors,* 163 F. (2d) 1022 (C. C. A. 8th, 1947).

The Commission has not yet held further hearings on this matter. At the request of the Institutional Group and Alleghany Corporation, such hearings have been twice postponed. Hearings are presently set for March 23, 1948.

The history of this Plan closely followed that of its only predecessor. After approval by the District Court, that plan was also abandoned by its sponsors, including the predecessor of the Institutional Group and at their request, in which others joined, remanded by the Circuit Court of Appeals for the Eighth Circuit. *Missouri Pacific R. R.* v. *Protective Committee,* 135 F. (2d) 741 (C. C. A. 8th, 1943).

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* There were three other related appeals heard with the instant case before the Circuit Court on a consolidated record. Petition for writs of certiorari in these three cases was also granted on January 12, 1948. These three cases (Nos. 452-454 incl., October Term, 1947) are the subject of a separate brief filed herewith. They relate solely to a procedural question—the name in which the appeal from the District Court order of allowance should be taken.

The Errors Which Petitioner Intends to Urge

Petitioner specifies the following errors * which he intends to urge:

1. The court below erred in holding that the $10,565,227 claim of a parent corporation in reorganization against a dominated subsidiary is valid in its entirety and ranks prior to the claim of public investors, who are secured by the parent's pledge of the subsidiary's common stock, when:

(a) $2,795,000 of the Claim is based on eleven "advances" made by the parent over thirteen consecutive quarters which were matched within one to five days by dividends from the subsidiary to the parent in substantially equivalent amounts, which the subsidiary could not have otherwise paid.

(b) The parent did not permit the subsidiary to devote its earnings to its own needs, but caused the subsidiary to pay to the parent twenty consecutive quarterly dividends in excess of earnings, while the subsidiary was already borrowing heavily for an extensive expansion program.

(c) $1,261,009 of the Claim is based on the parent's write-up of the subsidiary's indebtedness through bookkeeping entries made six months before bankruptcy without the consent or approval of the subsidiary—the consideration for such write-up being the alleged assignment

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* There were two issues on which respondents in the Circuit Court of Appeals below sought to dispose of the case without an adjudication on the merits of the MOP Claim. These were (a) laches and (b) the pledge by MOP, since redeemed, of two notes representing a portion of the MOP Claim.

The Circuit Court decided the case on the merits and thus, in our opinion, rejected these grounds. For this reason, we do not deem these grounds as errors of the Court below requiring specification. We refer to these matters only to avoid any possible technical contention by respondents. If any contention be made that such specification is necessary, we request this Court to regard this statement as the specification, if any, which may be required by the rules.

to the subsidiary of uncollectible claims in the same face amount, from which the subsidiary has not received one penny to this day.

(d) Much of the Claim represents funds supplied by the parent to the subsidiary, whose resources were inadequate to enable it to finance an extensive expansion program, after public borrowing became impossible, which funds were denominated by the parent as "advances" and never as additional capital investments.

2. The court below erred in allowing the disputed claim of a parent corporation against a dominated subsidiary, both being in reorganization with the identical trustee, over the challenge of public investors, when the subsidiary has never had the protection of a separate and independent trustee.

Summary of the Argument

POINT I—The MOP claim must be disallowed.

Corsicana National Bank v. *Johnson*, 251 U. S. 68, 90 (1919);
Pepper v. *Litton*, 308 U. S. 295, 306 (1939).

(a) $2,795,000 of the Advances in the MOP Claim Were Only Paper Transactions. $2,650,000 of Such Advances Were Repaid Almost Immediately.

(b) $1,261,009 of the Claim Represents an Invalid Write-up.

6 Williston, *Contracts* (Rev. Ed., 1938), §1870;
M. K. Goetz Brewing Co. v. *Waln*, 92 Neb. 614, 139 N. W. 230 (1912).

(c) The Balance of the Claim Must Be Disallowed.

Pepper v. *Litton*, 308 U. S. 295, 306 (1939);
Taylor v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939).

POINT II—The MOP claim, to the extent, not disallowed, must be subordinated.

Taylor v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939);
In re Commonwealth Light & Power Co., 141 F. (2d) 734 (C. C. A. 7th, 1944);
In re Indiana Service Corporation, S. E. C. Holding Company Act Release No. 7054, December 14, 1946, pp. 33-4;
Chesapeake & Ohio Ry. Purchase, 261 I. C. C. 239, 255 (1945);
Ecker v. *Western Pacific R. R.*, 318 U. S. 448, 479 (1943);
American United Mutual Life Ins. Co. v. *Avon Park*, 311 U. S. 138, 145 (1940);
In re Missouri Pacific R. R., 13 F. Supp. 888, 892 (E. D. Mo., 1935).

POINT III—Alleged insolvency of MOP and the fact that the public investors are claiming through NOTM common stock do not prevent subordination of the MOP claim.

(a) Parental Insolvency and Competing Creditors.

Taylor v. *Standard Gas & Electric Co.*, 96 F. (2d) 693, 700 (C. C. A. 10th, 1938);
In re Commonwealth Light & Power Co., 141 F. (2d) 734 (C. C. A. 7th, 1944);
In re Kentucky Wagon Mfg. Co., 71 F. (2d) 802 (C. C. A. 6th, 1934), cert. denied sub. nom. *Laurent* v. *Stites*, 293 U. S. 612 (1934);
Zartman v. *First National Bank*, 216 U. S. 134 (1910);
National Bankruptcy Act, §70;
2 Scott, *Trusts*, §307.

(b) Public Investors Claiming Through Common Stock.

POINT IV—The MOP claim may not be allowed in the absence of an independent NOTM trustee.

2 Scott, *Trusts*, § 170.23;
In re Stern, 144 Fed. 956, 959 (C. C. A. 8th, 1906);
Dudley v. *Mealey*, 147 F. (2d) 268, 272 (C. C. A. 2d, 1945), *cert. denied*, 325 U. S. 873 (1945);
Wilson v. *Continental Building & Loan Assn.*, 232 Fed. 824 (C. C. A. 9th, 1916);
In re Chicago R. I. & P. Ry., 110 F. (2d) 395 (C. C. A. 7th, 1940);
Pepper v. *Litton*, 308 U. S. 295, 306 (1939);
In re Central States Electric Corp., 143 F. (2d) 684 (C. C. A. 4th, 1944).

POINT V—An adjudication on the merits of the MOP claim is necessary.

(a) Laches.

Ecker v. *Western Pacific R. R.*, 318 U. S. 448, 479 (1943);
American United Mutual Life Ins. Co. v. *Avon Park*, 311 U. S. 138, 145 (1940).

(b) MOP's Pledge of the NOTM Notes.

Metropolitan Eelevated Ry. v. *Kneeland*, 120 N. Y. 134, 24 N. E. 381 (1890);
Gates v. *Ritchie*, 162 Ark. 484, 258 S. W. 397 (1924);
Uniform Negotiable Instruments Law, Sec. 58.

POINT I

The MOP Claim must be disallowed.

This Court has made it clear that a claim based on parent-subsidiary transactions is "presumptively fraudulent" and requires "rigorous scrutiny" before allowance.

Corsicana National Bank v. *Johnson*, 251 U. S. 68, 90 (1919);
Pepper v. *Litton*, 308 U. S. 295, 306 (1939).

In *Pepper* v. *Litton*, this Court, speaking of disallowance of claims of controlling stockholders, stated:

> "* * * Their dealings with the corporation are subjected to rigorous scrutiny and where any of their contracts or engagements with the corporation is challenged the burden is on the * * * [controlling] stockholder not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein. * * * The essence of the test is whether or not under all the circumstances the transaction carries the earmarks of an arm's length bargain. If it does not, equity will set it aside. * * *" (308 U. S. at 306-307).

The MOP Intercompany Claim cannot survive such a test and must be disallowed.

(a) $2,795,000 of the advances in the MOP Claim were only paper transactions. $2,654,000 of such advances were repaid almost immediately.

$2,795,000 of the "advances" included in the Claim are sums which MOP "advanced" NOTM one day, and received back almost immediately in payments which MOP denominated "dividends". Actually, these paper transactions did not constitute advances. They were mere bookkeeping entries.

These paper transactions arose in eleven out of thirteen quarters from 1928 to 1931, when MOP arranged simultaneous MOP "advances" and NOTM "dividends" of approximately equivalent amounts (see pp. 9-11, *supra*). In these eleven paper transactions MOP advanced a total of $2,795,000, of which $2,654,000 was repaid almost immediately to MOP in the form of "dividends". Only $141,000 of these bookkeeping transactions may still be deemed open.

One example will suffice to demonstrate the invalidity of a claim based on such matching advances. On February 28, 1930, MOP advanced NOTM $260,000 with which NOTM paid its quarterly dividend of $259,576 one day later. Of such dividend, MOP received about $242,072 (Ex. 75-81, 177, 281, R. 453, 630, 900). MOP, however, does not now make a claim for the $18,000 which was not repaid. MOP now claims the full $260,000 together with interest of approximately $185,000, or a total of $445,000 for an advance of $18,000. MOP is seeking such a return as its reward for its stewardship as a fiduciary.

Good faith is no answer to the foregoing. It cannot validate a defective claim or justify a second repayment.

These facts are undisputed. Respondents' own exhibits and the District Court's findings show the dates and amounts of these "advances" and "dividends" (Ex. 281, R. 19, 900). The Circuit Court of Appeals did not discuss this issue.

The allowance of such a claim would be a repudiation of the salutary test enunciated by this Court in *Pepper* v. *Litton*.

Moreover, $825,000 of the foregoing $2,795,000 advances included in the MOP Claim were used for the purpose of paying illegal dividends. As Mr. Wyer admitted, the NOTM 1931 dividends—matching these $825,000 advances—were illegal (R. 296). On pages 8, 13, supra, we have

shown that the NOTM 1931 dividends were paid out of capital.*

Advances necessary for the payment of such illegal dividends cannot constitute the basis for a valid claim.

(b) $1,261,009 of the claim represents an invalid write-up.

Among the clearest instances of MOP mismanagement is the bookkeeping transaction in October, 1932, by which MOP, less than six months before bankruptcy, sought to saddle NOTM with a $1,261,009 obligation.

MOP wanted to improve its position by shifting debtors. It was dependent on RFC and RCC loans, and sought to dress up its books (Ex. 221, R. 701).

MOP decreased its claim against IGN, a weak debtor, and increased its claim against NOTM a stronger debtor, by the same amount. As alleged consideration for this write-up, MOP planned to have IGN assign to NOTM certain uncollectible claims belonging to IGN of equal amount. We have already seen on page 17 that these claims were uncollectible.

This was accomplished through a series of bookkeeping and journal entries and without one penny of cash changing hands (Ex. 221-225, 231-232, 240-241, R. 701, 706, 794).

The Record contains no evidence that the directors of NOTM and IGN ever took any corporate action. The Record shows only that the MOP Board of Directors approved this transaction (Ex. 226, 232, R. 706). But it is clear that a corporate resolution by MOP alone is not sufficient to bind either NOTM or IGN.

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* The impairment of NOTM capital was even greater by reason of the following. The total of debts due NOTM from Brownsville and other subsidiaries had mounted from $2,680,000 in 1924 to over $16,000,000 by 1931 (Ex. 69, 94, R. 432, 486). These past-due debts, totalling 23% of all NOTM assets by 1931, were nevertheless carried at face value on the NOTM books. If even a modest reserve had been set up, NOTM's book surplus would have disappeared.

Unless the party alleged to have become substituted as the debtor so agrees, there obviously can be no novation.

6 Williston, *Contracts* (Rev. Ed. 1938), § 1870;
M. K. Goetz Brewing Co. v. *Waln*, 92 Neb. 614, 139 N. W. 230 (1912).

As the Supreme Court of Nebraska said in the *Waln* case:

> "It is elementary that, in a case of this kind, there can be no novation unless the party whom (sic) it is asserted assumed and agreed to pay the debt became unconditionally bound to the creditor to pay the debt of the original debtor" (92 Neb. at 620).

Even if formal action had been taken, the legality of this transaction would not be assured because of the domination by MOP. It does not carry "the earmarks of an arm's length bargain" required by *Pepper* v. *Litton*.

Respondents urged that NOTM had not been damaged by this transaction because the debts were due from NOTM wholly owned subsidiaries, and on a consolidated basis the Gulf Coast Lines owed not one penny more after the transfer (Institutional Group Brief, C. C. A., p. 23). The District Court found that the transaction had not been shown to have "adversely affected" NOTM (R. 22). The Circuit Court below is silent on this matter.

Such conclusions are irrelevant. The transaction allegedly giving rise to MOP's claim is unenforceable. MOP's claim is, therefore, invalid, irrespective of prejudice to NOTM.

As a fact, NOTM was prejudiced. The whole purpose of the transaction was to increase MOP's claim against NOTM. NOTM—not previously liable for these debts—was to be substituted as debtor for another. NOTM was required to bear the risk of uncollectibility of the IGN claims.

At this time, NOTM already had claims against its subsidiaries in excess of $19,000,000 which were long past due and which it was unable to collect (Ex. 69, 94, 202-205, R. 432, 486, 671-672). This transaction added an additional $1,261,009 to its burden.*

The District Court found that all advances from December, 1931, to bankruptcy were for operating expenses, interest and sinking fund installments (R. 19). There is nothing in this bookkeeping entry, included in the claim as a "cash advance", which even remotely justifies such a characterization.

It is immaterial whether or not Mr. Wyer, common treasurer of MOP and NOTM, may have written this transaction into the respective accounts of the two corporations—in keeping with the practice of making the books of MOP and its subsidiaries agree in every minor detail. As Mr. Justice Roberts said in the *Deep Rock* case:

> "All the documentary evidence came from the books and records of Standard and Deep Rock * * *. The book entries were made under the direction of Standard's Auditing Department, which supervised the Auditing Department of Deep Rock, and it is not surprising, therefore, that the books of the two companies agree with respect to all items" (306 U. S. at 311).

All we have to do is to substitute MOP for Standard and NOTM for Deep Rock and we have the precise situation of the case at bar.

This saddling transaction is but one example of Mr. Wyer's bookkeeping. We have already seen how MOP and Alleghany engaged in bookkeeping devices to the

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* NOTM, moreover, owned all the mortgage bonds of these companies, as well as other large claims against them. These were already uncollectible and the stock of these roads was worthless. An addition of further uncollectible items was of illusory value in improving NOTM's position as a stockholder.

detriment of subsidiaries, e.g., imposition of burdensome contracts and MOP's costly purchases of its own securities at Van Sweringen direction (see pp. 14-15). Mr. Wyer's bookkeeping played a prominent role in these transactions. Before the Senate Committee, Mr. Wyer admitted that such bookkeeping had been false in numerous respects (Senate Committee Hearings, *supra*, 75th Cong., 1st Sess., Part 12, pp. 5059-5063, 5079).

President (then Senator) Truman, who was conducting the hearing, replied to a comment by Mr. Wyer: "Mr. Wyer • • • this statement is exactly in line with your bookkeeping. I do not think it conveys the truth • • •" (*Id.*, Part 12, p. 5269).

(c) The balance of the Claim must be disallowed.

As we have seen, almost 40% of the MOP Claim is invalid. This consists of the $2,654,000 of matched advances and dividends, and the $1,261,009 bookkeeping entry. We submit that the balance of the Claim must be disallowed.

The fiduciary parent has the burden of establishing its claim. *Pepper* v. *Litton*, 308 U. S. 295, 306 (1939).

Part of the remaining advances were made not for the benefit of NOTM but for the benefit of MOP. For example, MOP caused NOTM to acquire a number of North Texas Lines which the Commission recognized "were really acquired for the benefit of the entire MOP system. They have usually been operated at a deficit since acquisition." *Missouri Pacific R. R. Reorganization*, 239 ICC 7, 71 (1940). Such roads ran at a loss (R. 873).

Part of the MOP advances were made to cover interest on the NOTM bonds issued to acquire these lines and to cover other operating deficits (R. 19). How much of the balance of the Claim is so attributable is not disclosed. One fact is clear; a substantial part of the balance is attributable thereto.

The entire course of the history of the operation of NOTM as a part of the MOP system makes it impossible to determine on the record how much, if any, of the balance of the Claim is valid. The language of this Court in the *Deep Rock* case is particularly apposite:

> "It is impossible to recast Deep Rock's history and experience so as even to approximate what would be its financial condition at this day * * * had its fiscal affairs been conducted with an eye single to its own interests." *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307, 323 (1939).

Under all the circumstances, we submit that the entire Claim must be disallowed. To the extent, if any, that the Claim is not disallowed, it must be subordinated as we now proceed to show.

POINT II

The MOP Claim, to the extent, if any, not disallowed, must be subordinated.

Under the decision of this Court in the *Deep Rock* case, *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939), the MOP Intercompany Claim—to the extent, if any, not disallowed—must be subordinated to the claim of public investors holding MOP 5¼% Secured Bonds.

The question before this Court is whether the *Deep Rock* doctrine—good law and good morals—is to be whittled away.

The *Deep Rock* case

Both the parent, Standard, and its dominated subsidiary, Deep Rock, had been in Section 77B proceedings.

Standard asserted a claim against Deep Rock for advances totalling $9,300,000. This claim was resisted by the Deep Rock independent trustee and Deep Rock public

preferred stockholders. After prolonged hearings, Standard proposed a compromise. It excluded every questionable item and reduced its claim to $5,000,000, based solely on advances for the undisputed benefit of Deep Rock.

After rejecting one Plan based on this compromise, the District Court allocated most of the new Deep Rock common stock to Standard for its compromise claim, and a small portion of new common to the public preferred stockholders. On appeal by a minority group of preferred stockholders, the Circuit Court affirmed.

This Court reversed, holding that it had been an abuse of discretion to fail to subordinate the entire Standard claim to the claim of the public preferred stockholders. The Court concluded:

> "Deep Rock finds itself bankrupt not only because of the enormous sums it owes Standard but because of the abuses in management due to the paramount interests of interlocking officers and directors in the preservation of Standard's position, as at once proprietor and creditor of Deep Rock" (306 U. S. at 323).

The *Commonwealth* case

The outstanding application of the *Deep Rock* doctrine is found in the decision of the Circuit Court of Appeals for the Seventh Circuit in *In re Commonwealth Light & Power Co.*, 141 F. (2d) 734 (C. C. A. 7th, 1944).

In the *Commonwealth* case, the parent corporation, Inland, owning all the stock of its newly organized subsidiary, Michigan, pledged the stock to secure a public issue of Inland bonds.

Years later, Inland (the parent) went into Section 77B reorganization proceedings. It then had a $620,132 claim against Michigan for advances.

The District Court subordinated the parent's claim to the claim of Inland public bondholders holding the pledged Michigan common stock.

The Circuit Court of Appeals affirmed, concluding that:

> "Michigan was under the complete control and domination of Inland; that
>
> it was insufficiently capitalized; that
>
> Inland failed to make provision for sound financing for Michigan's extensive rehabilitation and expansion program; and that
>
> Michigan, upon the demand of Inland, declared dividends which were paid to Inland by open account borrowings from Inland * * *" (141 F. (2d) at 739).

The Circuit Court of Appeals below did not even refer to the *Commonwealth* case.

The Principles Underlying Subordination

Subordination was decreed in the *Deep Rock* and *Commonwealth* cases because of the parent's violation of its fiduciary obligations towards the dominated subsidiary. As was stated in the *Commonwealth* case:

> "* * * Inland, by reason of its entire ownership and control of Michigan, occupied a fiduciary position requiring scrupulous observance of its obligations to safeguard and preserve the interest of Inland Bonds and owed to its bondholders a duty not to impair the value of the Michigan stock * * *. And where there is a violation of those principles, equity will undo the wrong" (141 F. (2d) 734, 736-737).

In both cases, the breach of fiduciary duties arose from the parent's mismanagement of the subsidiary's financial affairs.

(1) Control and Domination of the Subsidiary

In the *Deep Rock* and *Commonwealth* cases, as in the instant case, the parent's control of the subsidiary stemmed from its ownership of all or almost all the subsidiary's voting stock.

In the *Deep Rock* case, this Court pointed out how Standard—the parent—implemented its control.

> "Standard's officers, directors and agents always constituted a majority of the Board. * * * A majority of Deep Rock's officers were officers or directors of Standard * * *. All of the fiscal affairs of the debtor were wholly controlled by Standard which was its banker and its sole source of financial aid" (306 U. S. at 310-311).

MOP went even farther. Upon acquisition, MOP officers and directors occupied a large majority on the NOTM Board of Directors, and most NOTM offices. By 1929, MOP directors occupied each place in the NOTM Board and all the principal offices of NOTM (Ex. 5-61, R. 403-406).

NOTM had no independent directors or principal officers. Its every act and decision was the act of MOP.

The character of MOP control has been indicated by the predecessor of the leading respondent, Institutional Group, which stated: "Financial management has been unsatisfactory * * *. Furthermore, the interests which took control of the railroad in 1930 (Alleghany) brought about transactions of doubtful legality, which caused great loss" (*Senate Committee Hearings, supra,* 75th Cong., 1st Sess., Part 13, p. 5824 [1939]).

(2) Dividends for Benefit of Parent

Outstanding among the financial mismanagement in the *Deep Rock* and *Commonwealth* cases was the continued insistence upon dividends from the subsidiary for the benefit of the parent.

Dividends and borrowing

In the *Deep Rock* case, this Court emphasized * as a ground of subordination that:

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* The Court's language makes inapplicable the cases relating to the legality of the payment of dividends to public stockholders out of isolated borrowings from third persons.

> "* * * dividends were declared in the face of the fact that Deep Rock had not the cash available to pay them and was at the time borrowing in large amounts from * * * Standard. * * *
>
> "It is evident that they would not have been paid over the long course of years by a company on the precipice of bankruptcy and in dire need of cash working capital" (306 U. S. at 317, 323).

The *Commonwealth* case also involved dividends siphoned from a subsidiary lacking cash and already borrowing large amounts. The technique in the *Commonwealth* case of matching simultaneous loans from the parent with dividends to the parent finds a striking parallel in the instant case.

Thus, in both the *Commonwealth* case and the instant case, the parents—Inland and MOP—made "advances", quarter in and quarter out through 1929, 1930 and 1931, to their respective subsidiaries on one day which were matched by "dividends" to the parents in relatively equivalent amounts a few days later.

In the *Commonwealth* case, this bookkeeping matching occurred as follows:

Amount of Advance	*Date of Advance*	*Payment of Dividend*	*Amount of Dividend*
$29,576	June 25, 1929	5 days later	$29,576
29,576	Sept. 26, 1929	4 days later	29,576
60,000	Jan. 6, 1930	6 days before	51,844
8,000	June 25, 1930	5 days later	7,663
40,000	Oct. 9, 1930	9 days before	38,313
59,000	Mar. 25, 1931	6 days later	34,000
40,000	June 20, 1931	10 days before	34,000
45,000	Sept. 24, 1931	5 days later	34,000
25,000	Dec. 26, 1931	5 days later	34,000
82,500*	Mar. 30, 1932	1 day later	34,000

(S. E. C. Ex. 28, *Commonwealth Record*, C. C. A. 7th, Vol. II, pp. 985-7.)

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* This item bears a notation also referring to bond interest.

On page 10, *supra*, appears a chart of almost simultaneous MOP advances and NOTM dividends in relatively equivalent amounts. Language cannot state more emphatically than these two charts the parallel between the *Commonwealth* case and the instant case.

If MOP or Inland had not made these advances, cash payment of the dividends would have been impossible. The same condition existed in the *Deep Rock* case. NOTM, Michigan and Deep Rock did not have the funds (Ex. 75-79, R. 453; S. E. C. Ex. 28, *Commonwealth* Record, C. C. A. 7th, Vol. II, p. 986; 306 U. S. at 317, 323).

S.E.C. policy on matching loans and dividends

The S.E.C. condemned such matching loans and dividends in the *Commonwealth* case.

In its subsequent decision in the *Indiana Service* case, the S.E.C. again attacked a claim of a parent for loans to a dominated subsidiary, matched by almost simultaneous dividends to the parent. The S.E.C. stated in language strikingly applicable to the case at bar:

> "While some of the loans made by Utilities (the parent) to Indiana Service were more or less contemporaneous with the preferred and common stock dividend payment dates, Utilities (the parent) states that there is no evidence that such advances were made in whole or in part for dividend purposes.
>
> "• • • We think it is fairly obvious that the loans made to Indiana Service (the subsidiary) concurrently with the payment of common stock dividends to Utilities when Indiana Service was in need of funds for other purposes were for the purpose of converting earned surplus to notes payable. On the basis of the foregoing, we would have no difficulty in finding a proper basis for subordination. • • •" (*In re Indiana Service Corporation*, S.E.C. Holding Company Act Release No. 7054, December 14, 1946, pp. 33-4).

Ratio of dividends to earnings

In the *Deep Rock* case, the dividends condemned by this Court as requiring subordination totalled less than 60% of Deep Rock earnings (*Deep Rock Record*, Sup. Ct., Vol. II, pp. 649-50).

In the *Commonwealth* case, the Court criticized dividends of 80% of earnings.

The situation in the case at bar is even stronger. During the entire period of MOP control, NOTM was caused to declare dividends of over 133% of its own earnings, and over 130% of consolidated earnings (Ex. 195, 301, R. 663, 914).

From 1927 to bankruptcy, NOTM dividends exceeded consolidated NOTM earnings in each and every year. Such NOTM dividends totalled $5,190,000 or over 450% of the $1,150,000 consolidated earnings for these dividend years (Ex. 301, R. 914).

By compelling NOTM to pay dividends well in excess of earnings, MOP actually decreased its investment in NOTM and prejudiced the equity of the pledged stock, in violation of the provisions of the MOP 5¼% Secured Bond Trust Indenture.*

Dividends paid while subsidiary borrowing for an expansion program

In the *Commonwealth* case, the Court emphasized the wrongfulness of compelling dividends "at a time when Michigan (the subsidiary) was engaged in an extensive rehabilitation and improvement program which it was unable to finance out of its own income * * *" (141 F. [2d] at 738).

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* Article V of such Trust Indenture provided:

"(m) The Railroad Company (MOP) will not do or perform, or voluntarily permit to be done or performed, any act or thing by which the validity or priority of this indenture and pledge hereunder of the Pledged Stock, as herein provided, can or may be in any way or manner impeached" (R. 12).

The *Deep Rock* case also makes it clear that such dividends by a subsidiary are wrongful when the subsidiary is already borrowing to maintain its operations and an expansion program (306 U. S. at 317).

NOTM, likewise, was caused by MOP to pay dividends when it was already borrowing for an expansion and improvement program directed by MOP.

Compulsory dividends while borrowing for expansion are especially detrimental to the subsidiary. It is prevented from devoting earnings to the expansion program which is straining its resources. Its dependence on borrowed funds is increased.

Not only was MOP's conduct more improper in this respect than that of Standard and Inland, but the 1931 NOTM dividends were actually illegal (R. 296).

This Court made it clear that dividends were wrongful when detrimental to the subsidiary, whether or not they are illegal.

> "Whatever may be the fact as to the legality of such dividends judged by the balance sheets and earnings statements of Deep Rock, it is evident that they would not have been paid over a long course of years by a company on the precipice of bankruptcy and in dire need of cash working capital" (306 U. S. at 323).

Respondents urged in the court below that petitioner cannot be heard to complain because a fraction of the NOTM dividends may have helped MOP to pay interest on the 5¼% Secured Bonds. This is immaterial. This precise situation existed in the *Commonwealth* case, and did not prevent subordination. Moreover, in the *Deep Rock* case itself, the millions of dollars of dividends on the preferred stock, cited by the Court as an outstanding example of Standard mismanagement, were paid not indirectly but directly to the very class of holders which later successfully sought subordination of the Standard claim.

(3) Inadequate Capitalization and Unsound Financing for Expansion

Among the elements of the financial mismanagement in the *Deep Rock* and *Commonwealth* cases was the parent's policy of running the subsidiary without resources adequate for the conduct of its business. Such inadequacy of capitalization compelled the continued advances from the parent that marks those two cases and the case at bar. Advances under such circumstances do not attain the status of a debt, prior to the claim of public investors, in the event of reorganization.

Under Standard control, the financial resources of Deep Rock were not adequate, although its original financing provided $6,700,000 cash working capital. Deep Rock was forced to borrow constantly.

This Court made it clear that such continued necessity to borrow was what it meant by inadequate capitalization. It stated:

> "* * * So inadequate was Deep Rock's capitalization that, in the period from organization to 1926, the balance due on open account to Standard grew to more than $14,800,000" (306 U. S. at 315).

The resources of Michigan were also inadequate. Its financial history consisted of a dreary cycle of bank loans and advances from its parent (Inland) which in turn were refunded as long as possible by public security issues. Michigan's publicly held bonds and preferred stock increased. Michigan's cash position was weak and its open account indebtedness to Inland mounted.

Under MOP control, NOTM also suffered from insufficient capitalization. Its dependence on borrowed funds had been intensified by the very transaction by which MOP acquired NOTM, compelling NOTM to borrow to pay the large dividends constituting a portion of the purchase price. Thereafter NOTM was forced to borrow continuously and heavily (Ex. 281, R. 900).

From 1924 to 1928, these sums were raised by public bond issues, increasing NOTM total bonded indebtedness by $13,500,000 or 46% in four years (Ex. 71, R. 432).

After the spring of 1928, NOTM was no longer able to borrow from the public (R. 1023-1024). It could only borrow from MOP and its open account debt to MOP rose steadily (Ex. 239, R. 791). Such NOTM borrowings from MOP ranged from $2,610,000 in 1929, one of the few years in which NOTM showed net earnings, to $1,400,000 in 1930, and almost $3,000,000 in both 1931 and 1932. Such repeated borrowing in good years and bad demonstrated MOP's failure to provide NOTM with sufficient capital to conduct its business (Ex. 281, R. 900).

Mr. Wyer himself stressed that the program imposed on NOTM "required intensive financing with outside capital or new capital" and that the MOP policy was to raise such capital not through additional equity investment, but through "short term loans and ultimately the sale of debt" (R. 930). Thus, in Mr. Wyer's own words, we have a vivid picture of NOTM's lack of resources and MOP's refusal to make any additional equity investment.

In contrast, both Standard and Inland made additional stock investments in their respective subsidiaries. Thus, Standard took additional Deep Rock common stock as payment for advances to Deep Rock totalling more than twice its later claim. Similarly, Inland surrendered advances equal to almost three-quarters of its subsequent claim for additional Michigan common stock.

(4) Other Aspects of Financial Mismanagement

In each of these three cases, the exploitation of the subsidiary was prompted by the needs of the holding company systems of which parent and subsidiary alike were part.

In the *Commonwealth* case, the parent—Inland—was draining funds from Michigan as a result of the pressure from its parent, a holding company, in the Insull Utility Empire. The *Deep Rock* case arose out of another utility empire, that of H. M. Byllesby & Co.

As we have seen, the bulk of the MOP Claim arose during the period of Alleghany control of MOP.

The Commission has aptly summarized the type of pressure * exerted by Alleghany. It stated that Alleghany:

> "* * * for its own purposes caused or permitted carrier corporations which it controlled to pay dividends when they were not being earned, or to pay dividends when they were under a heavy burden of debt, when traffic was declining, and earnings were decreasing, notwithstanding scrimping of maintenance." *Chesapeake & Ohio Ry. Purchase*, 261 I. C. C. 239, 255 (1945).

Such mismanagement of NOTM was not restricted to wrongful dividends, lack of adequate resources to conduct its business and failure to provide sound financing for the expansion program.

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* The Senate Committee reported on one instance of such pressure as follows:

"Less than half a year after it had procured control of the Missouri Pacific system, Alleghany Corporation * * * used funds from the treasury of the Missouri Pacific itself to purchase Missouri Pacific stocks and the bonds of a Missouri Pacific subsidiary.

"* * * For a year and a half the ownership of the purchased securities was kept in suspense * * *. Thus, if they appreciated in value, the Van Sweringens were free to assign them to a company in which they had a large personal interest; while if the securities declined in value, they could be assigned to a company in which the Van Sweringen interest was attenuated. The securities in fact declined in value; and the Van Sweringens thereafter insisted that they had been purchased for the account of a Missouri Pacific subsidiary * * *.

"To keep the transaction secret a variety of devices was used. * * * the president of the railroad was not informed of the program until it was nearly completed; and the companies engaged in the operations repeatedly and consistently falsified their books.

"* * * On the basis of the false accounting, false reports were submitted to several State public service commissions and to the Bureau of Internal Revenue. Material information was withheld from the Interstate Commerce Commission and from the Federal bankruptcy court.

"* * * The Missouri Pacific paid some $4,000,000 for securities, now worth virtually nothing at all to it. Transactions like these helped bring about the insolvency of the railroad" (Sen. Rep. No. 25, Part 11, 76th Cong., 3d Sess., p. 34).

As previously set forth on pages 16-18, the Claim itself is based in part on the invalid bookkeeping transaction, less than six months before bankruptcy, by which MOP wrote up the indebtedness of NOTM by $1,261,009.

A further instance is the expenditure of five and one-half million dollars of NOTM funds for the acquisition of North Texas "feeder" lines for the benefit of MOP and IGN, not that of NOTM, referred to on pages 18-19.

We repeat the language of this Court in the *Deep Rock* case:

> "It is impossible to recast Deep Rock's history and experience so as even to approximate * * * its financial condition * * * had it been adequately capitalized and independently managed and had its fiscal affairs been conducted with an eye single to its own interests" (306 U. S. at 323).

Unlike the *Deep Rock* Case, the MOP Claim Is Itself Defective

In the *Deep Rock* case, every questionable transaction had been eliminated from the Standard claim. This Court, nevertheless, insisted on subordination of its claim consisting solely of undisputed advances for the benefit of Deep Rock.

In the instant case, the MOP Claim is itself defective. As we have seen, it is composed in large measure of illegal and unenforceable items, and must be disallowed in its entirety. To the extent, if any, that the claim is not disallowed, the application of the doctrine of subordination is all the more compelling.

Respondents contended on two grounds that the *Deep Rock* doctrine is inapplicable in the instant case: (a) the operational benefits to NOTM, and (b) the findings of the Commission.

Operational Benefits No Bar to Subordination

Respondents contended below that the *Deep Rock* doctrine was inapplicable because of the operational benefits received by NOTM under MOP ownership. These factors, however, are irrelevant.

All these alleged benefits cannot purify one wrongful dividend. This proposition should be obvious. Any other conclusion would create a new principle in our law that the general conduct or good faith of a fiduciary will excuse specific breaches of its fiduciary obligations.

The Baldwin Improvement Program need not have been affected one iota, if not a single dividend was paid by NOTM to MOP. Not one rail less would have been laid nor one trestle less would have been constructed.

Both the *Deep Rock* and *Commonwealth* cases make it clear that operational benefits do not prevent subordination.

In the *Deep Rock* case, there was evidence of a considerable physical improvement of Deep Rock. Additional oil properties were acquired and extensions erected for the benefit of Deep Rock (306 U. S. at 317, 319). In 1927 alone, Deep Rock improvements and additions amounted to more than $2,700,000 and in 1928 alone more than $1,700,000 (*Deep Rock* Record, Sup. Ct., Vol. III, pp. 106, 108; Trustee's Exs. H, I).

Similarly, in the *Commonwealth* case, there was not one allegation of operational mismanagement. It was not disputed that Michigan had received substantial operational benefits from the Inland "extensive rehabilitation and expansion program". The proponents of the Inland claim strongly argued that the *Deep Rock* doctrine could therefore not be applied (*Middle West Corp.* and *Bachrach Brief*, C. C. A., p. 27). The Circuit Court of Appeals rejected that argument.

Respondents also argued that if MOP had intended to mismanage NOTM, it could have more easily achieved its results through its dealings with NOTM in respect to main-

tenance, rentals, and traffic (Institutional Group Brief, C. C. A., p. 15). This very type of argument was made in the *Commonwealth* case. It was argued there that Inland's lack of exploitation of Michigan was demonstrated by the fact it had not despoiled Michigan through unfair leases, management fees, and intercompany security sales (*Middle West Corp. Reply Brief*, C. C. A., p. 5). This argument was rejected there and should be rejected here.

In any event, the Baldwin-Safford correspondence discloses MOP's primary interest in drawing off dividends from NOTM, not in improving the physical condition of NOTM. Thus, Mr. Safford acknowledged that maintenance and improvement expenditures had been cut to the "irreducible minimum" in an attempt to make possible the continued flow of dividends to MOP (Ex. 135-137, R. 601). (See page 12.)

The Findings of the Commission

Respondents sought below to distinguish the *Deep Rock* case on the ground that Division 4 of the Commission prior to bankruptcy had made certain findings with respect to the MOP advances (Institutional Group Brief, C. C. A., p. 55). Both the District Court and the Circuit Court relied on such Commission findings (R. 1110, R. IV, 16).

No significance may properly be given to such findings. The fact is that the Commission itself, in considering the MOP Plan of Reorganization gave no weight to the hasty and *ex parte* findings of Division 4.

The Commission itself said that the determination of the validity of the claim is a matter "for litigation in the Courts" (R. 20842).

An independent judicial determination of the validity and priority of the MOP Claim must be made.

Ecker v. *Western Pacific R. R.*, 318 U. S. 448, 479 (1943);

American United Mutual Life Ins. Co. v. *Avon Park*, 311 U. S. 138, 145-146 (1940).

The Division 4 decision was reached on the basis of financial statements sworn to by Mr. Wyer and criticized by the late Commissioner Joseph B. Eastman and other officials (Senate Committee Hearings, *supra*, 74th Cong., 2nd Sess., Part 2, p. 544 (1938); 75th Cong., 1st Sess., Part 3, pp. 1116, 1139 [1938]).

The Commission regarded such criticized financial statements of Mr. Wyer as of sufficient importance to be called to the attention of the Congress in its annual report four years later; it stated:

> "The Alleghany Corporation is a holding company which had stock control of the Missouri Pacific Railroad Company and through a subsidiary purchased certain terminal-railway properties. * * * That railroad company contracted to purchase the properties from the subsidiary subject to our approval, but it made certain payments on the purchase price in advance of such approval and under the contracts it was liable either on the purchase price or as a guarantor against damage in the event of our disapproval for not less than $16,000,000. This liability was not shown in the annual reports filed with us * * *, and in these reports $3,200,000 * * * was shown in * * * 'Special deposits', although it had been paid out and was not on deposit. * * * In connection with applications of the Missouri Pacific for loans from the Reconstruction Finance Corporation, balance sheets which failed to disclose the liability under the contracts and included the payments in 'Special deposits' were filed with the Reconstruction Finance Corporation and with us and were sworn to by the treasurer of the railroad company. Furthermore, in connection with an application by the latter for authority to issue securities we asked for a breakdown of an estimate of needed capital expenditures, and in a statement filed by the same officer a proposed payment under the above mentioned contracts was included in a total for 'Additions and betterments'. * * *
>
> "As stated above, these are merely illustrations of incorrect and misleading reports out of several disclosed at the hearing."

(51st Commission Annual Report (1937), pp. 27, 28.)

The treasurer above referred to was Mr. Wyer. The MOP applications for RFC loans above referred to are the applications which resulted in the findings on which the Courts below relied.

In the "Terminal Shares" matter in this reorganization, referred to immediately above, the late Judge Faris condemned the management of Alleghany and MOP*; he stated:

> "* * * For me it is plain that the Congress intended to stop a practice among railroads and their exploiters and manipulators, which has had much to do with making the financial history of railroads the most indecent and sordid chapter ever written in the history of this or any other nation." (*In re Missouri Pacific R. R. Co.*, 13 F. Supp. 888, 892 [E. D. Mo., 1935]).

The District Court below said that it was "impressed by the fact that almost all of the transactions of which Comstock complains were entered into only after notice to, and with the approval of, the Interstate Commerce Commission" (R. 1110). This statement is without support. The matching of "advances" and dividends, the 1932 saddling transaction, the Brownsville dividends of 1931, which the Commission itself held to be in violation of regulations, and other instances of MOP mismanagement were all imposed on NOTM without notice to the Commission or its approval.

Damage to 5¼% Secured Bondholders

The Circuit Court was influenced to conclude that the *Deep Rock* doctrine was inapplicable by the fact that the

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* This arose on the application of the RFC—then a claimant—to require the MOP Trustee to disavow or rescind what Judge Faris subsequently found to be "improvident, unfair, unlawful and overreaching" contracts imposed on MOP by Alleghany.

The RFC application and brief attacked both Alleghany and Mr. Wyer's testimony in support of such contracts (RFC Brief before Special Master, pp. 66, 77-78).

NOTM stock "has been kept intact and of recognized value through depressions which wiped out vast amounts of such securities" (R. IV, 27).

In the *Commonwealth* case, however, subordination was decreed although the subsidiary—Michigan—never went into reorganization and although Michigan stock was then being sold for over $1,000,000.

The injury to the 5¼% Secured Bondholders by MOP mismanagement is manifest. MOP's wrongful conduct has unquestionably diminished the size of the NOTM estate and impaired the value of NOTM stock which constitutes the security of such bonds. Such conduct is not cured by the fact that NOTM stock has not been "wiped out".

In the case at bar, the fiduciary parent determined the form and substance of the financial dealings between the parent and the dominated subsidiary. No independent Board of Directors of the subsidiary, NOTM, would have consented to such transactions or undertaken the financial obligations which compose the MOP Claim in suit. MOP, now in bankruptcy proceedings, seeks to insert its claim ahead of the claims of the public investors who claim through NOTM. Under such circumstances, we submit, the MOP Claim must be subordinated.

The decision of the Court below seriously limits the protection extended to public investors by the *Deep Rock* doctrine. That doctrine should not be impaired.

POINT III

Alleged insolvency of MOP and the fact that the public investors are claiming through NOTM common stock do not prevent subordination of the MOP Claim.

Nothing in the instant case prevents application of the doctrine of subordination.

(a) Parental insolvency and competing creditors

The District Court held that the Deep Rock doctrine could not be applied to the case at bar. This was on the theory that MOP was insolvent, and that innocent MOP creditors, asserting its claim, could not be held responsible for MOP's wrongdoing (R. 1111).

This contention has been rejected in both the *Deep Rock* and *Commonwealth* cases.

In the *Deep Rock* case, as the Circuit Court for the Tenth Circuit pointed out, the parent—Standard—was in Section 77B proceedings.

> *Taylor* v. *Standard Gas & Electric Co.*, 96 F. (2d) 693, 700 (C. C. A. 10th, 1938).

The advocates of the Standard claim argued before this Court that the Standard claim could, therefore, not be subordinated.* This Court disagreed.

The *Commonwealth* case arose in the reorganization proceedings of the insolvent parent. The parent's creditors vigorously argued that subordination would work to their prejudice, and was therefore inapplicable. The Seventh Circuit squarely rejected the contention, and subordinated the insolvent parent's claim.

Subordination, despite parental insolvency, has similarly been decreed by the Circuit Court of Appeals for the Sixth Circuit.

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* Standard Brief, Supreme Court, p. 60; *id.*, p. iii, 40.

In re Kentucky Wagon Mfg. Co., 71 F. (2d) 802 (C. C. A. 6th, 1934), cert. denied sub. nom. *Laurent* v. *Stites*, 293 U. S. 612 (1934).

The contrary contention that the doctrine of subordination is inapplicable in the event of parental insolvency is based on the equitable maxim of equality between equally innocent creditors. This contention necessarily presupposes an undisputed claim where the sole basis for subordination is the parent's inequitable conduct outside the claim. Further, the contention is that the only basis for subordination disappears when the undisputed claim is asserted by blameless creditors rather than by the wrongdoing parent.

This contention cannot be raised in the case at bar because the MOP Claim is not an undisputed claim. The MOP Claim is itself, in large measure, composed of inequitable and unenforceable transactions. Such defects and infirmities remain whether wrongdoing MOP or its innocent creditors seek to assert the tainted claim.

Even if a portion of the MOP Claim should rest on undisputed advances, the *Deep Rock* case makes it clear that the Court will not attempt to separate the components of the Claim. It will not reconstruct the subsidiary's financial position, to determine what it would have been "had its fiscal affairs been conducted with an eye single to its own interests". To attempt to do so, would tend to destroy the *Deep Rock* doctrine, a salutary standard for the conduct of business by fiduciary parent corporations.

The insolvent parent's alleged claim is an asset of the insolvent to which creditors, represented by the bankruptcy trustee, succeed. With respect to this possible asset, as to others, the parent's creditors succeed to the rights of the parent and no more. It is settled that they are not in the position of an innocent purchaser for value; they remain subject to the equities under which the insolvent held the claim.

Zartman v. *First National Bank*, 216 U. S. 134 (1910);
National Bankruptcy Act, § 70;
2 Scott, *Trusts*, § 307.

(b) Public investors claiming through common stock

The fact that the public investors urging subordination are claiming through NOTM common stock, cannot prevent application of the doctrine of subordination.

The public investors in the case at bar had no voice in management. NOTM was the instrument of MOP. Indeed, MOP, prior to default, retained all voting rights on the stock pledged to secure the MOP 5¼% Secured Bonds (R. 11).

MOP clearly occupied a fiduciary position with respect to NOTM as a result of its overwhelming stock ownership and the complete domination of its affairs.

MOP further stood in a fiduciary relationship to the holders of MOP 5¼% Secured Bonds as a result of its pledge of NOTM stock to secure such bonds, and its express undertaking, in the MOP 5¼% Secured Bond Trust Indenture, not to impeach the pledge (R. 12). The Courts below so found (R. IV-19).

The Circuit Court of Appeals for the Seventh Circuit in the *Commonwealth* case, at the urging of the S.E.C., thus decreed subordination in this very situation.

There is, to be sure, a certain mechanical problem in the allocation of new securities, where a parent's claim is subordinated to public investors claiming through the subsidiary's common stock, *i.e.*, what is the extent of the claim of the common stockholder?

In the instant case, however, this mechanical problem does not arise. The public investors—pledgees of common stock—are bondholders with a clearly defined claim for principal and accrued interest on their bonds.

POINT IV

The MOP Claim may not be allowed in the absence of an independent NOTM trustee.

MOP and NOTM have one Trustee, Mr. Guy A. Thompson. This Trustee patently has conflicting loyalties. The performance of his duties as Trustee of MOP in pressing the MOP Claim inescapably clashes with his statutory duty as Trustee of NOTM to resist the Claim (Sec. 47a (8), National Bankruptcy Act). This conflict of interest has deprived NOTM of the full protection to which it is entitled by law, just as much as if it arose from opposing personal financial interests.

See 2 Scott, *Trusts*, § 170.23.

A conflict of interest on the part of the trustee was condemned by Mr. Justice Van Devanter, who as a Circuit Judge, stated:

> "* * * the trustee's action (in not contesting a claim) was accorded undue consideration, when it is considered that * * * he was represented and presumably advised by counsel who was also representing the creditor whose claim was challenged. Of course, this ought not to have been, no matter what may have been the belief of counsel respecting its propriety. The interests of the creditors were adverse to the bankrupt estate, with the protection of which the trustee was charged, and were in conflict with the interests of others who were represented by the trustee."
>
> *In re Stern*, 144 Fed. 956, 959 (C. C. A. 8th, 1906).

This principle applies no less to the instant case.

Judge Learned Hand has stated that a conflict in interest in reorganization proceedings on the part of a trustee may not be tolerated.

> *Dudley* v. *Mealey*, 147 F. (2d) 268, 272 (C. C. A. 2d, 1945), *cert. denied*, 325 U. S. 873 (1945).

The Circuit Court of Appeals in the Ninth Circuit held so as well.

Wilson v. *Continental Building & Loan Assn.*, 232 Fed. 824 (C. C. A. 9th, 1916).

But cf.

In re Chicago R. I. & P. Ry., 110 F. (2d) 395 (C. C. A. 7th, 1940).

The lack of an independent NOTM Trustee was especially harmful since the MOP Claim involved parent-subsidiary transactions, which, as we have seen, require vigorous judicial scrutiny before allowance.

Pepper v. *Litton*, 308 U. S. 295, 306 (1939).

The type of scrutiny required has been indicated by a decision of the Circuit Court of Appeals for the Fourth Circuit.

In re Central States Electric Corp., 143 F. (2d) 684 (C. C. A. 4th, 1944).

That Court insisted upon:

> "* * * an investigation of the most complete and thorough-going character, with opportunity to examine under oath those who had knowledge of the corporation's affairs * * * to the end that all the processes of discovery provided by law might be fully used" (143 F. (2d) at 686).

The failure of the NOTM Trustee to oppose the MOP Claim has not been offset by the efforts of petitioner and other public bondholders. Resources available to a trustee for the purpose of investigation obviously are superior to those at the command of scattered public investors. As the accountant for petitioner testified:

> "Mr. Thompson (the trustee) directed me to * * * Mr. Vollmer * (who) * * * stated that they would make records available, but I was not to ask any questions of any of the employees: * * * any direct questioning would have to be done in court" (R. 495).

This is far from the "opportunity to examine under oath" and the full use of "all the processes of discovery provided by law" stressed in the *Central States Electric* case.

Moreover, in the MOP reorganization, the character of MOP management and the existence of the Trustee's conflict of interest had already been the subject of formal proceedings in the District Court.

The NOTM Bondholders Committee—one of the respondents herein—and the Indenture Trustee of NOTM Bonds had previously filed petitions for the appointment of a separate Trustee for NOTM because of Mr. Thompson's conflict. Such petitions pointed out, among other things, that MOP—instead of having a claim against NOTM—was really indebted to NOTM (R. 87, 101). Hearings on the petitions are still pending (R. 109).

As we have seen, Judge Faris, then in charge of the MOP reorganization, had previously set aside the "improvident, unfair, unlawful and overreaching" Terminal Shares contracts imposed on MOP by Alleghany.

In these proceedings, furthermore, Guaranty Trust Co., which was indenture trustee of two classes of MOP securities, resigned one of its two important trusteeships because of the possibility that a conflict of interest might develop. It sought to avoid the possibility that as trustee for one group of beneficiaries it might be opposing itself as trustee for another (*Senate Committee Hearings*, 76th Cong., 3d Sess., Part 15, pp. 6671-6672).

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* Mr. Vollmer was Executive Assistant to the Trustee (Ex. 56, R. 406).

With this background, the need for an independent trustee of NOTM and for a vigorous scrutiny of the MOP Claim were especially clear.

The common Trustee in the case at bar indicated in the District Court that he did not feel the MOP Claim was especially important; he testified that he always thought that the Claim was "washed out in the Plan, and would be washed out in any Plan" (R. 645). Accordingly, he did not announce whether or not he regarded the MOP Claim as valid until some time after the hearings had commenced in the District Court (R. 646). Previously during the hearings, the Trustee's counsel, who had served in that capacity for many years, was unable to tell the Court the Trustee's attitude on the Claim (R. 392-393).

To permit the validity of the Intercompany Claim of MOP, a fiduciary, to be established in such circumstances, is to deny to NOTM the protection to which it is entitled.

POINT V

An Adjudication on the Merits of the MOP Claim Is Necessary.

Respondents maintained in the Court below that this case may be disposed of on either of two separate grounds without an adjudication on the merits of the MOP Claim. These alleged grounds are:

(a) laches; and

(b) the MOP pledge, since redeemed, to the RFC and RCC of two NOTM notes representing a portion of, but not the entire MOP Claim.

(a) Laches

The Circuit Court opinion demonstrates that laches may not be invoked in this case.

The Circuit Court pointed out that although the District Court had expressed an opinion as to laches, the District Court

> "concluded that judicial adjudication should be made as to the debt and that the court should, and therefore it did, hear the evidence covering the whole period of management of the New Orleans by the Missouri Pacific, and it tried out the whole case and all the charges presented by Comstock on the merits." (R. IV, 21)

Similarly, the Circuit Court of Appeals gave no weight to the contention of laches and adjudicated the MOP Claim on the merits.

This was the first adjudication of the claim.

This Court has held that such a determination of the validity and priority of the Claim is indispensable for the purposes of the reorganization.

> *Ecker* v. *Western Pacific R. R.*, 318 U. S. 448, 479 (1943);
> *American United Mutual Life Ins. Co.* v. *Avon Park*, 311 U. S. 138, 145 (1940).

Without such an adjudication, allocations of new securities—a prerequisite to reorganization—cannot be made.

As the Circuit Court indicated, laches, accordingly, plays no role in the instant case.

(b) MOP's Pledge of the NOTM Notes

Respondents also seek wholly to avoid an adjudication on the merits by reliance on the legal consequences which they would draw from the one-time MOP pledge, since redeemed, of two NOTM notes representing a portion, but not the entire MOP Claim.

The District Court expressly found that only a portion of the $10,565,227 Claim was pledged to the RFC and RCC (R. 19-21). Thus, whatever the legal consequences attributed to the pledge, an adjudication on the merits

of the validity and priority of the sizable portion of the MOP Claim which was never pledged cannot be avoided. This, of itself, is a complete answer to respondents' contention.

The former pledge to the RFC and RCC does not even dispose of that portion of the Claim represented by the heretofore pledged NOTM notes. This is elementary Bills and Notes law.

(1) As between the maker (NOTM) and the payee (MOP) of these notes, it is clear that all questions with regard to the transactions surrounding their issuance remain open for determination, irrespective of transfer to a holder in due course or otherwise.

Metropolitan Elevated Ry. v. *Kneeland,* 120 N. Y. 134, 24 N. E. 381 (1890).
Gates v. *Ritchie,* 162 Ark. 484, 258 S. W. 397 (1924).

(2) Subsequent to the decision of the District Court in this case, the notes were reacquired by the payee, MOP, through its trustee, which is again the holder (R. 1155). It is settled that a payee reacquiring an instrument—even from a holder in due course—is subject to all the equities and defenses of the maker.

Uniform Negotiable Instruments Law, Sec. 58.*

(3) The RFC and RCC are no longer in the case. The District Court's findings with respect to their position have become moot.

At present no MOP creditor has succeeded to any of their rights. The District Court order, authorizing payment of the RFC and RCC, only subrogated MOP creditors to the rights of the RFC and RCC "to the extent of their respective interests, if any, in the cash used in the

* The Uniform Negotiable Instruments Law is in force in both Missouri and Ohio.

purchase of" the RFC and RCC claims (R. 1157, 1165). The District Court to this date has not determined whether respondents or any other MOP creditors had an interest in such cash. Until such determination is made, no creditor can be said to have any interest in the NOTM notes.

Accordingly, it is understandable why the Circuit Court did not regard the legal consequences of the MOP pledge as of sufficient importance to merit discussion.

CONCLUSION

It is respectfully submitted that the order and judgment of the Circuit Court of Appeals for the Eighth Circuit be reversed and the cause be remanded with directions that the MOP Claim be disallowed or subordinated to the claims of the holders of MOP 5¼% Secured Serial Gold Bonds.

Respectfully submitted,

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of Counsel.

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Supreme Court, U. S.
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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

Nos. 452-454, Incl.

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and others, etc.,
Petitioner,

vs.

GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Respondents.

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and others, etc.,
Petitioner,

vs.

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ANDREW W. COMSTOCK,
Petitioner,

vs.

GUY A. THOMPSON, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, et al.,
Respondents.

PETITIONERS' BRIEF

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ANDREW W. COMSTOCK,

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GUY A. THOMPSON, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, et al.,

Respondents.

PETITIONERS' BRIEF

Jurisdiction

Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended. Petition for writs of certiorari to the Circuit Court of Appeals for the Eighth Circuit was granted on January 12, 1948.

The Opinions of the Courts Below

The opinion of the District Court (R. 1089)* is reported in 64 F. Supp. 64. The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. IV-29) is reported in 163 F. (2d) 358.

Summary Statement of the Case

There were four related appeals before the Circuit Court of Appeals for the Eighth Circuit in the litigation over the validity and priority of the claim of the Missouri Pacific R. R. Co. (hereinafter called MOP) against the New Orleans, Texas & Mexico Ry. Co. (hereinafter called NOTM).

Three of these appeals were from Order No. 2604-A of the District Court below, which allowed the MOP Intercompany Claim and overruled objections relating thereto (R. 7). These three appeals were as follows:

(a) in the name of Andrew W. Comstock (Appeal No. 13,376, now Cause No. 451)

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* References to the transcript of the record are indicated by the letter "R." except for Volume IV thereof which is indicated by "R. IV". Arabic numerals indicate pages.

(b) in the name of NOTM, by Comstock (Appeal No. 13,377, now Cause No. 452)

(c) in the name of Guy A. Thompson, Trustee of NOTM, by Comstock (Appeal No. 13,378, now Cause No. 453).

The fourth appeal was that of Comstock in his own name from a subsequent order of the District Court (R. 39) denying his petition for leave to appeal from Order No. 2604-A in the name of Guy A. Thompson, Trustee of NOTM (Appeal No. 13,379, now Cause No. 454).

The Circuit Court of Appeals considered Appeal No. 13,376 taken by Comstock in his own name from Order No. 2604-A, and affirmed such order on the merits. This is Cause No. 451 in which this Court granted certiorari on January 12, 1948. The annexed brief relates to this cause.

The Circuit Court of Appeals dismissed the remaining three appeals (Nos. 13,377-79, Causes No. 452-4).

This brief relates to these three causes. In support thereof, we rely also on the annexed brief which is hereby incorporated by reference.

These three causes have been maintained for but one purpose. Petitioners seek an adjudication on the merits of the validity and priority of the MOP Intercompany Claim.

It is desired to eliminate from the litigation any possible procedural question as to whether Comstock should have appealed from the order of allowance of the MOP Intercompany Claim in the name of NOTM or in the name of the Trustee of NOTM rather than in his own.

CONCLUSION

It is respectfully submitted that the orders and judgments of the Circuit Court of Appeals for the Eighth Circuit be reversed and the cause be remanded with directions that the MOP Claim be disallowed or subordinated to the claims of the holders of MOP 5¼% Secured Serial Gold Bonds.

Respectfully submitted,

WILLIAM H. BIGGS,
Attorney for Petitioners,
Security Building,
St. Louis 2, Missouri.

PHILLIP I. BLUMBERG,
of Counsel.

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IN THE

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OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000 principal amount of said bonds,

Petitioner,

VS.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Respondents.

PETITIONER'S REPLY BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000 principal amount of said bonds,

Petitioner,

vs.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,

Respondents.

PETITIONER'S REPLY BRIEF

POINT I

This case presents no factual controversy. Respondents' suggestion that petitioner seeks a new trial is unwarranted.

There is no factual controversy before this Court. Thus, a substantial portion of the claim of the Missouri Pacific R. R. Co. (hereinafter called MOP) against its dominated subsidiary, the New Orleans, Texas & Mexico Ry. Co. (hereinafter called NOTM), is based on repeated MOP advances to NOTM consistently matched within a

few days by NOTM dividends to MOP in substantially equivalent amounts. The District Court so found (R. 19).*

Similarly, another substantial portion of the MOP Claim involves the bookkeeping transaction, six months before bankruptcy, by which MOP wrote up the indebtedness of NOTM to MOP by $1,261,009, without one penny of cash changing hands. The District Court so found (R. 22).

Petitioner is concerned with the legal significance of these undisputed facts. Do such transactions give rise to a *valid* claim? Do such transactions give rise to a *prior* claim? These are questions of law.

Most of the remainder of the Claim arises from sums advanced by a parent to its dominated subsidiary to enable it to finance an expansion program dictated by the parent. The subsidiary, then in need of funds, was unable to borrow from the public, and was already borrowing from the parent to pay dividends in excess of earnings. These undisputed facts also present a question of law.

If a substantial part of the MOP Claim is invalid, can the remainder of the Claim—so intimately involved with the dividend program and the write-up—be endowed with validity? Further, may a parent by the facile device of denominating such sums as "advances", rather than as additional capital investments, insert a claim against its dominated subsidiary ahead of the claim of public investors?

The decision of this Court on the validity and priority of the MOP Claim will be of cardinal importance in reorganization law. This Court set up standards of conduct for fiduciary parents in the *Deep Rock* case. *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939).

The decisions of the courts below whittle away that salutary doctrine. The question before this Court is one of law: will this Court permit the impairment of the *Deep Rock* doctrine?

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* References to the transcript of the record are indicated by the letter "R", except for Volume IV thereof, which is indicated by "R. IV". References to the volumes of Exhibits are indicated by the letters "Ex." Arabic numerals in all instances indicate pages.

POINT II

The Courts below erred in refusing to disallow or subordinate the MOP Claim.

On the record before this Court, the MOP Claim must be disallowed or—to the extent, if any, not disallowed—subordinated.

The Baldwin Improvement Program Cannot Impart Validity and Priority to the MOP Claim.

The Baldwin Improvement Program is the basis of respondents' case and of the decisions of the Courts below. It is asserted as the answer to the charge of MOP mismanagement.

Respondents urge that the men who conceived and carried out the Baldwin Improvement Program—beneficial to NOTM—would not have wanted to mismanage or injure NOTM (Group Brief, p. 58).

We shall not repeat the contention in our main brief that such operational benefits are no bar to disallowance or subordination (pp. 50-51).

We here point out the following:

General beneficence is no justification for a single wrongful act. An improper transaction between parent and subsidiary is not purged because the parent has otherwise benefited the subsidiary or has not overreached the subsidiary by other means.

The test of *Pepper* v. *Litton*, 308 U. S. 295 (1939), is that each transaction imposed on the subsidiary must have "inherent fairness" and meet the requirements of an "arm's length bargain". This Court expressly held that good faith alone is insufficient (308 U. S. at 306-307).

In urging the invalidity and subordination of the MOP Claim, we are not contending that a parent is a guarantor. We do not seek by way of hindsight to penalize a parent for its mistakes.

We contend that a fiduciary parent does not have a valid and prior claim in reorganization when it has made advances to a subsidiary repeatedly matched by simultaneous dividends to the parent, when it has written up the subsidiary's indebtedness to itself, and when it has caused such a subsidiary in need of funds to finance an expansion program out of further borrowings from the parent.

The validity and priority of the MOP Claim must be determined in the first instance by the legality and fairness of its components. Each of these components must be judged on its own merits.

If a component part of the Claim is illegal or unfair, the Claim must be disallowed or subordinated to that extent. Respondents * so concede (Group Brief, p. 62). Such disallowance or subordination is mandatory, irrespective of the legality and fairness of other transactions between MOP and NOTM and irespective of MOP's alleged good faith.

Furthermore, disallowance or subordination may be required although the components of the MOP Claim are not individually shown to be unlawful or even imprudent or unfair.

Respondents, however, assert that subordination for "alleged wrongful acts of MOP mismanagement, many of which are not even remotely connected with the claim"

---

* This reply brief deals with the joint brief of respondents Group of Institutional Investors, Manufacturers Trust Co. and MOP General Mortgage Bondholders Committee (hereinafter called Group Brief). This renders unnecessary specific reply to the brief of the MOP Convertible 5½% Bondholders Committee.

is unjustified (Group Brief, p. 62). This contention is contrary to the doctrine of the *Deep Rock* case.*

In the *Deep Rock* case, the parent's compromise claim, which was in issue before this Court, was composed solely of items which were indisputably both legal and fair. *Taylor v. Standard Gas & Electric Co.*, 306 U. S. 307 (1939); 96 F. (2d) 693, 700-701 (C. C. A. 10th, 1938). Nevertheless, because of other unfair acts of the parent, its claim, based solely on admittedly lawful and fair transactions, was subordinated.

Continued Advances by a Parent to a Subsidiary to Pay Simultaneous Dividends to the Parent Cannot Give Rise to a Valid Claim.

$2,795,000† of the MOP Claim is based on sums which MOP, in eleven out of thirteen consecutive quarters, advanced to NOTM. All but $141,000 thereof was returned

---

* The Court below speaking through another Judge similarly stated in *In re Kansas City Journal-Post Co.*, 144 F. (2d) 791 (C. C. A. 8th, 1944):

> "The inequity which will entitle a bankruptcy court to regulate the distribution to a creditor, by subordination or other equitable means, need not therefore be specifically related to the creditor's claim, either in its origin or in its acquisition, but it may equally arise out of any unfair act on the part of the creditor, which affects the bankruptcy results to other creditors and so makes it inequitable that he should assert a parity with them in the distribution of the estate; and with the most critical force may the application be made where a fiduciary relation is involved." (144 F. [2d] 791 at 804.)

† Respondents contend that the advances for matching dividends total only $2,082,456. They assert that the MOP advances in November, 1928 and February, 1929, matching simultaneous NOTM advances are not relevant because of NOTM repayment. They also would not include any part of a matching advance in excess of $259,576, the amount of the simultaneous dividend (Group Brief, p. 21n). Respondents, however, overlook the fact that MOP itself dictated the allocation of NOTM repayments among the various MOP advances, and that respondents themselves included—as they had to—such advances in the schedule showing the basis for the MOP Claim (Ex. 239, 281, R. 791, 900).

In urging the invalidity and subordination of the MOP Claim, we are not contending that a parent is a guarantor. We do not seek by way of hindsight to penalize a parent for its mistakes.

We contend that a fiduciary parent does not have a valid and prior claim in reorganization when it has made advances to a subsidiary repeatedly matched by simultaneous dividends to the parent, when it has written up the subsidiary's indebtedness to itself, and when it has caused such a subsidiary in need of funds to finance an expansion program out of further borrowings from the parent.

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† Respondents contend that the advances for matching dividends total only $2,082,456. They assert that the MOP advances in November, 1928 and February, 1929, matching simultaneous NOTM advances are not relevant because of NOTM repayment. They also would not include any part of a matching advance in excess of $259,576, the amount of the simultaneous dividend (Group Brief, p. 21n). Respondents, however, overlook the fact that MOP itself dictated the allocation of NOTM repayments among the various MOP advances, and that respondents themselves included—as they had to—such advances in the schedule showing the basis for the MOP Claim (Ex. 239, 281, R. 791, 900).

to MOP within a few days in matching payments, described as dividends.

Mr. Wyer and respondents seek to dismiss the relation of the eleven advances to eleven dividends as a coincidence (R. 901-903; Group Brief, p. 24). How many times must a coincidence occur before it becomes more than a coincidence?

Whether or not the "purpose" of the borrowing was to reimburse the NOTM treasury for expenditures for improvements, as the District Court found (R. 18), the matching dividends were in fact paid out of the advances.

Without such MOP advances, the NOTM dividends could not have been paid; the NOTM Treasurer did not have the available cash (Ex. 75-79, R. 453).

Respondents concede, in effect, that these advances would not have been necessary if NOTM had not declared dividends to MOP (R. 903; Group Brief, p. 24).

We do not take issue with the cases cited by respondents, dealing with an isolated borrowing by an independent corporation from a third party in order to pay an isolated dividend (Group Brief, p. 46). We contend that such cases have no application to a consistent pattern of repeated simultaneous advances and dividends between parent and subsidiary.

NOTM Dividends 450% of Consolidated Earnings.

After 1926, there was not one year in which NOTM consolidated income covered the dividends exacted, quarter in and quarter out, by MOP. During this period, NOTM dividends of $5,190,000 dwarfed consolidated earnings of $1,150,000 (Ex. 301, R. 914). No independent management would have continued the unbroken chain of dividends in excess of earnings over twenty consecutive quarters. No independent management would have paid such dividends in excess of 450% of earnings.

MOP was subjected to intense pressure—from its continued bond flotations and from its parent, Alleghany—to

maintain its reported income. Receiving over 90% of each NOTM dividend, MOP insisted on a steady flow of dividends, even when "payment" was possible only through simultaneous paper "advances".

Such NOTM dividends were all the more detrimental since "it was apparent", as respondents point out, "that substantial improvements would be necessary in order to make the GCL a first class railroad system" (Group Brief, p. 12). The time when heavy expenditures are being made for such improvements, as well as for expansion, is not the time for dividends, and certainly not for borrowing to pay dividends in excess of earnings.

After years of draining NOTM dividends in excess of earnings, MOP had to resort to extraordinary efforts to continue NOTM dividends in 1931.

It was already the second year of the depression, and the officers of MOP and NOTM knew that 1931 was going to be a bad year * (Ex. 137, R. 601).

To provide NOTM with an ostensible surplus to permit the declaration of such dividends in 1931, MOP caused NOTM's principal subsidiary, the St. Louis, Brownsville & Mexico Ry. Co. (hereinafter called Brownsville) to declare dividends totalling $4,155,000 in the space of less than one month in 1931.

Brownsville could not pay such dividends, as the officers of NOTM knew at the time. Thus, $3,155,000 of these dividends remained unpaid throughout 1931 (Ex. 311, R. 928). Nonetheless, it was all included in NOTM 1931 income.

When the Commission in 1936 directed NOTM to write off all the Brownsville dividends then unpaid, it did not thereby approve that portion of these Brownsville dividends which were paid after 1931, as respondents suggest (Group Brief, p. 31). The Commission expressly stated:

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* There is no basis for respondents' suggestion that the disappearance of earnings was not known until "several months after the end of that year" (Group Brief, p. 56).

> "While it is at this time too late to correct the income accounts which have already been closed, it is not too late to write off the unpaid portion of this dividend * * *" (Ex. 63, R. 421).

Thus, in reconstructing the NOTM 1931 balance sheet in accordance with the decision of the Commission, $3,155,000—unpaid through 1931—must be deducted.* The Commission expressly found that inclusion of the dividends in NOTM income was improper "prior to actual collection" (Ex. 63, R. 421). With such a deduction, NOTM 1931 dividends resulted in an impairment of NOTM capital of $800,000 (Ex. 195, R. 663).

This is what Mr. Wyer meant when he told the Senate Committee that 1931 NOTM dividends were paid out of capital † (R. 296).

Whether or not NOTM dividends in 1931 were illegal is not decisive. As this Court emphasized in the *Deep Rock* case, the test of dividends is whether or not an independent management "with an eye single to" the interests of the subsidiary would have declared them (306 U. S. at 323). These dividends do not meet such a test.

The MOP Claim Includes an Item of $1,261,009 "Saddled" on NOTM Without Authority or Consideration.

The MOP Claim includes a bookkeeping write-up of NOTM indebtedness amounting to $1,261,009 from which NOTM has not received one penny to this day. This was done on the threshold of bankruptcy.

Respondents seek to justify this transaction on several grounds (Group Brief, pp. 25-27).

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* Thus, respondents are in error when they attempt to bolster the 1931 NOTM balance sheet by $1,100,000 of these 1931 Brownsville dividends, paid *after* 1931 (Group Brief, pp. 30-31). (Italics added.)

† *Hearings before Sub-Committee of Senate Committee on Interstate Commerce* pursuant to S. Res. 71, 75th Cong., 1st Sess., Part 12, p. 5296 (1938).

They assert that the debts of the subsidiaries amounting to $1,261,009 * could not have been permitted to remain unpaid. They overlook the fact that a component of the MOP system—not a member of the public—was the creditor.

If MOP had let matters stand as they were, it would have made no difference whatsoever to the debtor companies.

Respondents maintain that NOTM had to acquire these claims to protect its ownership and control of the Gulf Coast Lines. No reason in support of that contention is suggested. The NOTM position already rested on its ownership of all the mortgage bonds of these roads—superior in lien to these unsecured claims. The stock of these roads had for a long time been of dubious value. These roads ran at a deficit, as Mr. Wyer pointed out (R. 873). The road owing most of these claims had been in default to NOTM for years on its mortgage bond interest (Ex. 179, 223, R. 632, 701). NOTM already held over $19,000,000 of past-due indebtedness of its subsidiaries (Ex. 69, 94, R. 432, 486). Consequently, the addition of $1,261,009 in claims constituted no additional protection to NOTM.

Respondents finally seek to defend this transaction as undoing a violation of NOTM's fiduciary obligations to IGN.

MOP concededly dictated the policies of both NOTM and IGN throughout this period. It was MOP, not NOTM, that dictated the substance and form of all these transactions. One instance of MOP wrongdoing may not be justified by another.†

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* The only possible claim that International Great Northern Ry. (hereinafter called I-GN) might have had against NOTM amounted to $64,129 (Ex. 223, R. 701).

† Respondents have suggested that all the facts about the MOP Claim were before the Commission. The record before the Commission will be examined in vain to find the details of this "saddling" transaction. These were not brought out until the presentation of petitioner's case in the hearing in the District Court.

Respondents further assert that the $1,261,009 write-up should be allowed, because, indeed, it did not harm NOTM. This is a remarkable shift from respondents' position that all advances were in cash and that NOTM received a full dollar's worth for each dollar of advances (Group Brief, p. 63).

The Significance of Intra-Gulf Coast Lines Transactions.

Respondents contend that an inquiry into the transactions between NOTM and its subsidiaries at the dictation of MOP is "without significance" and irrelevant (Group Brief, pp. 31-32).

It is settled law, however, as respondents concede, that the legality of NOTM dividends to MOP must be judged by NOTM balance sheets, not by the consolidated balance sheets.

The intra-Gulf Coast Lines transactions are significant because they are the device by which MOP increased NOTM book income and ostensibly permitted NOTM to pay dividends to MOP, which it otherwise could not have paid.*

Acquisition of "Feeder" Lines.

Respondents have recognized in their brief—as did their predecessor committee and the Commission †—that the five Texas "feeder" lines acquired by NOTM at the cost of over five and one-half million dollars had been acquired for the benefit of MOP and IGN.

On page 10 of their brief, they admit that the MOP system received benefits from the traffic of these "feeder" roads, and that adjustments in favor of NOTM were nec-

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* Thus, the role of Brownsville dividends in the scheme of MOP management is clear. As Mr. Baldwin testified: "That was the only way that I knew to pass money" to NOTM (R. 602).

† *Missouri Pacific R. R. Reorganization,* 239 I. C. C. 7, 71 (1940); First Amended Plan of Reorganization, Protective Committee for MOP First and Refunding Bonds, p. 61; R. 20882.

essary. They claim, however, that such adjustments were already made in the allocations of securities in the 1944 Plan—since remanded.

This case, however, is concerned with the validity and priority of the MOP Claim, not with the allocation of all new securities in a Plan of Reorganization.

If MOP management imposed such purchases for its own benefit upon NOTM—as is generally recognized—"any adjustments which need to be made" can, in the first instance, properly be made only through the disallowance or subordination of the MOP Claim.

The Findings of the Commission on the MOP Advances.

This Court has clearly established that the determination of the validity and priority of a claim is a judicial and not a Commission function.* Nevertheless, respondents seek to attribute the "greatest weight" to certain findings by the Commission with respect to the MOP advances (Group Brief, pp. 21-22).

These findings were made in connection with MOP's application for further loans from the RFC (*Missouri Pacific R.R. Reconstruction Loan,* 189 I. C. C. 286 (1933), R. 110-19).

In support of such MOP application, Mr. Wyer submitted sworn financial statements. It was on the basis of such statements that the Commission approved the loan.

Subsequently, the Commission discovered that such financial statements sworn to by Mr. Wyer were "incorrect and misleading". It reported that fact to the Congress (51st Commission Annual Report (1937), pp. 27, 28).

The chief railroad examiner of the RFC stated that it had been on the basis of such sworn papers that the RFC was induced to make the loans to MOP (*Senate Com-*

* *Ecker* v. *Western Pacific R. R.*, 318 U. S. 448, 479 (1943); *American United Mutual Life Ins. Co.* v. *Avon Park*, 311 U. S. 138, 145-46 (1940).

mittee Hearings, supra, 75th Cong., 1st Sess., Part 3, pp. 1111-18, [1938]).

Yet, respondents now seek to attribute validity and priority to the MOP Claim by reference to *ex parte* Commission findings induced by such misrepresentations.

The *Deep Rock* Case.

Several statements of respondents with respect to the *Deep Rock* case should not go uncorrected (Group Brief, pp. 43-46).

Respondents stress the place that the Bradstreet property transaction played in the decision of the Court. Although this was an important instance of Standard mismanagement, it was not the decisive feature in the case.*

The continued payment of dividends out of borrowed funds when Deep Rock was already borrowing for other purposes, and the failure to provide Deep Rock with resources adequate for the conduct of its business, not the Bradstreet transaction, occupied the leading role.

This Court left no doubt that subordination was ordered because the "fiscal affairs" of Deep Rock had not "been conducted with an eye single to its own interests" (306 U. S. at 323).

Respondents have misconceived the meaning of inadequate capitalization. They assert that adequacy of capitalization of a subsidiary is tested solely by the sufficiency of the parent's investment in the stock through which it exercises control (Group Brief, p. 49). They stress the amount of total GCL assets. Such assets, however, did not relieve either NOTM or its subsidiaries from the constant necessity of borrowing millions and millions of dollars throughout the period of MOP control. Nor did such assets suffice to stave off bankruptcy.

To avoid inadequacy of capitalization, the subsidiary must be capitalized at a level which provides it with suf-

* In its discussion of the salient facts of the *Deep Rock* case, the Court in the *Commonwealth* case did not think the Bradstreet transaction sufficiently important to warrant mentioning.

ficient funds to conduct its business. Thus, where the debt of the subsidiary steadily increases and where it is forced to borrow continually, in good years and bad, to carry out a program dictated by the parent, it is inadequately capitalized. This is what this Court had in mind when it criticized the inadequate capitalization of Deep Rock (306 U. S. at 315).

Respondents point out, in another connection, that the parent "could have made additional investments in the capital stock of the subsidiaries * * * to finance improvements" (Group Brief, p. 28). This is precisely what MOP should have done with NOTM. Its failure to do so is one of the compelling reasons for subordination of the MOP Claim.

An independent board managing NOTM would either not have embarked on such an expansion and improvement program, or, if it had, it would have financed it, not solely through borrowing, but with new equity money.

Respondents defend the lack of additional equity investment on the ground that the Commission authorized the issuance of certain bonds to finance a portion of the expansion and improvement program (Group Brief, p. 52). The Commission, however, was not considering the significance in a bankruptcy proceeding of such bond issues in the light of the entire financial and dividend program imposed on NOTM during this entire period. The Commission, in passing on the legality of a bond issue in 1925 or 1927, was not passing on the priority of subsequent NOTM advances under the rule of the *Deep Rock* case.

The doctrine of subordination is not limited to preventing intentional preferences, as respondents suggest (Group Brief, p. 50). There is no basis for such restriction. When a parent advances sums to a dominated subsidiary, whose resources are inadequate to enable it to carry on its business and finance expansion, the doctrine of subordination protects public investors, if bankruptcy or reorganization intervenes. The doctrine will not permit the parent—irre-

spective of its intentions—to acquire a prior claim against the subsidiary by denominating such sums as "advances" or "debt" rather than as additional capital investment.

The Courts will not permit bankruptcy results to be determined by the label which the parent—in unrestrained control of the situation—chooses to affix to the transaction.

The *Commonwealth* Case.

Respondents seek to dispose of the *Commonwealth* case by emphasizing the initial capitalization of Michigan, the subsidiary (Group Brief, p. 45). Respondents, however, do not point out that Michigan—unlike Inland (its parent) and MOP and NOTM—never went into reorganization. Whatever one may say about such initial capitalization, it was obviously sufficient to avoid bankruptcy.

Respondents do not discuss the other aspects of the *Commonwealth* case in which the very techniques of MOP mismanagement in issue appear with surprising duplication of detail.

Thus, in both cases, the parents—under holding company pressure—caused the subsidiaries from 1929 through 1931 repeatedly to pay them dividends out of sums simultaneously advanced by them.

Similarly, both subsidiaries, NOTM and Michigan, were compelled to continue to pay such dividends while they were already borrowing for expansion and other purposes.

The doctrine of the *Commonwealth* case and our position are not flatly that "a corporation borrowing to finance an expansion program may not pay dividends", as respondents suggest (Group Brief, p. 47).

The doctrine is that a subsidiary borrowing from its parent to finance an expansion program may not further borrow consistently from the parent to pay it dividends, and particularly to pay it dividends in excess of earnings.

The Presence of MOP Creditors Asserting the Claim Cannot Prevent Subordination.

Respondents urge that the balance of equities is in favor of MOP creditors and that therefore subordination should not be decreed (Group Brief, p. 61).

There is a claim in issue before this Court. If the claim is tainted—if it is invalid or inequitable—it cannot survive, irrespective of the innocence of the persons who may be asserting it.

Respondents concede that the position of MOP creditors cannot purify a tainted claim. They admit:

> "If a claim against a subsidiary is defective or its priority was obtained in breach of a fiduciary duty, disallowance or adjustment of priority would seem to be appropriate * * *" (Group Brief, p. 62).

MOP creditors are thus not in a superior position as to the $2,795,000 of advances of which $2,654,000 was returned to MOP almost simultaneously in dividends.

There can be no superior equities of the MOP creditors for the $1,261,000 "saddling" transaction. This was not an advance, cash or otherwise, and NOTM received no conceivable benefit therefrom.

Respondents urge, however, that advances from MOP in the years 1932 and 1933 were for the benefit of NOTM and that it would have been improper to use MOP funds as a capital contribution to NOTM. They disregard the fact that NOTM's needs for funds during 1932 and 1933 were the direct product of MOP mismanagement throughout its period of control. This contention of respondents relates, moreover, to only $2,230,000 * of the MOP Claim. Whatever its merits, it cannot affect the determination with respect to the overwhelming bulk of the Claim.

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* This figure does not include the $1,261,009 October, 1932 "saddling" transaction, which does not represent any advance by MOP during 1932, and is a "defective" component of the Claim.

Over 38% of the Claim clearly rests on invalid and inequitable items. In the circumstances, this Court will not attempt to separate the components of the Claim and recast or reconstruct the subsidiary's financial position to determine what would have been the case, if the subsidiary had been managed by an independent Board.

The contention of competing equities derives from a misconception of the underlying basis of the *Deep Rock* doctrine. Under circumstances such as in the case at bar, a detailed analysis and specification and measuring of injuries and balancing of equities will not be made. For it is impossible to reconstruct the situation. An attempt to do so is fraught with so many difficulties that it may defeat the salutary purposes of the doctrine. That is why the *Deep Rock* rule is not based on meticulously analyzing isolated acts and weighing the injuries resulting from subserviency of dominated subsidiaries. In short, it is a rule to enforce proper standards of business conduct by fiduciary parents.

To hold otherwise and permit the *Deep Rock* doctrine to be whittled down would speedily mean its destruction as an effective standard for business management.

Respondents also assert that the equities are in favor of MOP creditors because petitioner and other 5¼% Secured Bondholders are secured by a "junior security" and "accepted the risks inherent in such a security" (Group Brief, p. 63). This can in no way excuse any violation of MOP's conceded fiduciary obligations. It is not the law that public investors in a subsidiary are required to accept the risks of a parent's wrongdoing.

MOP's creditors cannot rise above the equities of NOTM. The Claim is an asset of the MOP estate to which the creditors succeed. They succeed to the rights of the parent and no more.

Respondents have conceded that this is the general rule (Group Brief, p. 62). They have failed to demonstrate that it should not be applied herein.

POINT III

The rights of MOP 5¼% Secured Bondholders are unaffected by MOP's transfer to RFC and RCC of two NOTM notes. The rights of the RFC and RCC have been extinguished.

The District Court found that the Reconstruction Finance Corporation and Railroad Credit Corporation * (hereinafter called RFC and RCC, respectively) were bona fide pledgees for value of two NOTM notes representing the bulk of the Claim (R. 19-21). This pledge was subsequently redeemed (R. 1155, 1164). Respondents contend that such one-time transfer to RFC and RCC cut off the equities of the 5¼% Secured Bondholders on this part of the Claim (Group Brief, pp. 34-42). We submit that this contention is without merit.

(a) A determination of the MOP Claim is admittedly necessary to the extent of over $1,000,000.

As the District Court found, $610,000 principal amount of the MOP Claim was never pledged (R. 19-21).

Thus, whatever the consequences of the one-time pledge, an adjudication of that portion of the MOP Claim which was never pledged—amounting with interest to more than $1,000,000—cannot be avoided.

Respondents so concede (Group Brief, p. 42).

* The RCC held a second lien on the NOTM notes held by the RFC.

(b) The rights of the RFC and the RCC in the NOTM notes have become moot. What classes, if any, of MOP creditors succeed to the rights of the RFC and RCC has not yet been determined.

Several months after the order in issue adjudicating the MOP Claim, the District Court authorized the Trustee of MOP to purchase and settle the RFC and the RCC Claims (R. 1155, 1164). The RFC and the RCC surrendered their claims, together with all collateral, including the NOTM notes, to the Trustee of MOP.*

The findings of fact and conclusions of law of the District Court relating to the RFC and the RCC (R. 19-21, 30-2) have thus become moot. This was impliedly recognized by the Court below.

The orders of the District Court do not subrogate respondents or any other class of MOP creditors to the rights of the RFC and RCC. These orders do not determine the equitable owners of the cash in the MOP estate used in the settlement of the RFC and RCC Claims—the only basis for subrogation. This question was expressly reserved for future adjudication.† Such a determination of fact obviously cannot be undertaken by this Court.

(c) MOP, as claimant, always remained subject to the rights of MOP 5¼% Secured Bondholders.

Irrespective of any alleged consequences flowing from the pledge of the two NOTM notes, MOP—the payee in the notes and the claimant herein—at all times remained subject to the rights of MOP 5¼% Secured Bondholders.

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* The RFC was then stricken as a party herein (R. 1348). The RCC never was a party (R. 369-70).

† The orders specify "to the extent of their * * * interests, *if any*" (R. 1157, 1165). (Italics added.)

A wrongdoing payee may subject a maker of a note to liability by negotiating it to a holder in due course. Although such holder receives perfect title, such transfer does not protect the wrongdoing payee.

As between the maker (NOTM) and the payee (MOP), all questions with regard to the transactions surrounding issuance of the notes remain open for determination, irrespective of negotiation subjecting the maker to liability to a holder.

Metropolitan Elevated Ry. v. *Kneeland,* 120 N. Y. 134, 24 N. E. 381 (1890).
Gates v. *Ritchie,* 162 Ark. 484, 258 S. W. 397 (1924).
Bourke v. *Spaight,* 80 Kan. 387, 102 Pac. 253 (1909).

Whatever the rights of the RFC and RCC on these notes, MOP, the claimant, has always remained subject to the rights of NOTM.

(d) The NOTM notes have been reacquired by the payee-claimant; NOTM defenses are not cut off.

The RFC and RCC have surrendered the NOTM notes. Said notes are again in the possession of the payee, MOP, through its Trustee.

It is settled law that a wrongdoing payee reacquiring an instrument—even from a holder in due course—is subject to all the equities and defenses of the maker.

*Uniform Negotiable Instruments Law,** Sec. 58.
Collis v. *Kraft,* 118 Kan. 531, 235 Pac. 862 (1925).

Even if the District Court should subsequently rule that any class of MOP creditors has a lien on the notes held

* The *Uniform Negotiable Instruments Law* is in force in both Missouri and Ohio.

by the reacquiring payee, through its Trustee, such lien would be an equitable lien.*

Such equitable lien, however, can give MOP creditors no better rights against NOTM than those of the payee, MOP. Moreover, the NOTM equitable defenses arose first and must prevail.

Respondents also argue that as a result of the orders on the RFC and RCC claims, the MOP creditors claiming rights by way of subrogation "acquired perfect title" to the NOTM notes under said Section 58 (Group Brief, p. 41).

This contention is erroneous. As we have seen, there has been no determination as to what class of MOP creditors, if any, is entitled to subrogation. Moreover, Section 58 extends only to holders. Under Section 191 such creditors are not holders since they are not in possession of the notes. The holder is the Trustee of the reacquiring wrongdoing payee, barred from the protection of Section 58.

(e) The doctrine of marshalling protects MOP 5¼% Secured Bondholders.

The bankruptcy doctrine of marshalling of assets also protects the equities of MOP 5¼% Secured Bondholders. Assets must be marshalled where a creditor holds the obligations of two debtors, one of which is entitled to be reimbursed by the other. Under such circumstances the common creditor is required to proceed first against the assets of the wrongdoing debtor. This was long ago settled.

Ex parte Kendall, 1 Rose 71, 17 Ves. Jr. 514 (1811).
Tower Grove Bank & T. Co. v. *Duing,* 346 Mo. 896, 903, 144 S. W. (2d) 69 (1940).

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* Respondents concede that their alleged interest in the cash used by the Trustee—the alleged basis for subordination—was only an equitable lien (Group Brief, p. 40).

The RFC and RCC were secured by a large amount of MOP collateral, other than the NOTM notes (R. 1185, 1187). Under the doctrine of marshalling, the RFC and RCC would have been first required to apply the other MOP collateral to the satisfaction of their claims. Recourse to the NOTM notes would be permissible only if such other collateral proved insufficient.

Such other collateral was more than sufficient.* The District Court, on testimony ascribing *no* value to the NOTM notes (R. 1178), accordingly found:†

> "That the fair market value of the collateral pledged as security for said (RFC) claim is substantially in excess of the amount proposed to be paid RFC in compromise and settlement of its claim" (R. 1156).

Respondents argue that the market value of such collateral is of little importance for valuation purposes, and that earning power is critical.‡

In the *New Haven* reorganization, the Second Circuit held that market value is the measure of valuation of freely traded securities. The Court expressly held that

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* It included securities actively traded on the New York Stock Exchange with a market value of over $41,500,000 in contrast to the $26,033,000 for which the RFC Claim was settled (R. 1178, 1185).

† An identical finding was made with respect to the RCC (R. 1164).

‡ Respondents cite the last paragraph of Section 77(e), the *Ecker* and *Milwaukee* cases, and a recent Second Circuit decision in the *New Haven* reorganization.

None of these relates to the basis for valuation of securities freely traded on the market. The reference to earnings in the last paragraph of Section 77(e), for example, is expressly limited to the valuation of "property used in railroad operation".

the earnings of the properties underlying such securities were of no importance.*

In re New York, N. H. & H. R. R., 147 F. (2d) 40, 47-48 (C. C. A. 2nd, 1945), *cert. denied*, 325 U. S. 884 (1945), *reh. denied*, 326 U. S. 805 (1945).

Respondents maintain, furthermore, that marshalling is controlled not by this recent valuation of the District Court, but by a 1944 Commission valuation (R. 20762) (Group Brief, pp. 36-7).

When the District Court, however, found that the value of the RFC and RCC collateral (other than the NOTM notes) was substantially in excess of the loans, it was necessarily finding that the 1944 Commission valuation was then out of date. This subsequent adjudication must control.

Respondents seek to claim benefits under the orders relating to the RFC and RCC Claims but refuse to accept the valuation finding on which the orders were based. If respondents claim to have the right to be subrogated under such orders, they must concede that such other RFC and RCC collateral substantially exceeded the loans, with its corollary that marshalling is required herein.

POINT IV

The MOP Claim must be adjudicated on the merits. The Court below so ruled.

Neither petitioner nor other public holders of MOP 5¼% Secured Bonds are barred by laches.

Respondents' contention that laches is applicable because of the death of several possible witnesses is incongruous

* The recent *New Haven* decision cited by respondents involves marketable securities, but does not involve the measure of valuation. The doctrine of the earlier decision cited in the text is not questioned in any way. *Old Colony Bondholders* v. *New York, N. H. & H. R. R.*, 161 F. (2d) 413, 419-422 (C. C. A. 2nd, 1947), *cert. denied* 331 U. S. 858 (1947).

in the face of the record of many volumes, which the two Courts below felt more than adequate for an adjudication on the merits of the MOP Claim.

There are further incongruities in respondents' contention. Laches is not invoked by petitioner defending NOTM against its fiduciary parent's claim. It is not invoked by the fiduciary claimant or its Trustee. It is invoked by a number of bondholders of the claimant who have conceded that they lack any "financial interest" in the Claim (Group Brief, Dist. Ct., p. 2).

(a) An adjudication of the MOP Claim is indispensable for reorganization.

An adjudication on the merits of the validity and priority of the MOP Claim is indispensable for the purposes of the reorganization.

> *Ecker* v. *Western Pacific R. R.*, 318 U. S. 448, 479 (1943).
> *American United Mutual Life Ins. Co.* v. *Avon Park*, 311 U. S. 138, 145 (1940).

Without such an adjudication the reorganization cannot be completed. The reorganization court will be unable to make the finding required for approval of any plan of reorganization—that it is fair and equitable.

The Circuit Court indicated in its opinion that the doctrine of laches accordingly cannot be invoked to prevent an adjudication of the Claim (R. IV, 20-1).

(b) Laches may not be invoked since the Claimant could have moved for allowance of its Claim.

The MOP Claim resting on transactions between a fiduciary parent and its controlled and dominated subsidiary was "presumptively fraudulent" and required "rigorous scrutiny" before allowance.

Corsicana National Bank v. *Johnson*, 251 U. S. 68, 90 (1919).

Pepper v. *Litton*, 308 U. S. 295, 306-307 (1939).

Furthermore, the petitions filed in the District Court by the NOTM Bondholders Committee and Indenture Trustee, and still pending, had put the fiduciary claimant on notice that its claim was subject to question (R. 87, 101, 109).

The fiduciary claimant, MOP, through its trustee, could have requested the Court to determine the validity of its presumptively suspect claim at any time.

For its failure to do so, it has only itself to blame and cannot complain.

Cf. *Dudley* v. *Mealey*, 147 F. (2d) 268 (C. C. A. 2nd, 1945), *cert. denied*, 325 U. S. 873 (1945).

As Judge Learned Hand said in *Dudley* v. *Mealey*, a case involving a fiduciary claimant:

> "It would have been quick and cheap to obtain a ruling from the court upon the propriety of the * * * (fiduciary's claim); there was no need to wait until the Plan came up for approval; for any prejudice that may now result from the delay the parties (pressing the claim) have themselves to thank" (147 F. (2d) at 272).

Where a party might himself have moved for a judicial determination of the issue in dispute, and has failed to do so, he may not invoke laches.

Rannels v. *Rowe*, 145 Fed. 296 (C. C. A. 8th, 1906), *cert. denied sub nom. Sharpe* v. *Rannels*, 207 U. S. 592 (1907).

Spiller v. *St. Louis & S. F. R. R.*, 14 F. (2d) 284, 288-289 (C. C. A. 8th, 1926), *aff'd on laches issue, rev'd in part*, 274 U. S. 304 (1927).

Faced with a "presumptively fraudulent" claim of a fiduciary parent against a subsidiary, deprived of the pro-

tection of an independent trustee, it was the duty of the District Court, *sua sponte*, to adjudicate the claim.

Cf. *Dudley* v. *Mealey*, 147 F. (2d) 268 (C. C. A. 2nd, 1945), *cert. denied*, 325 U. S. 873 (1945).
3 *Collier, Bankruptcy* (14th ed.), pp. 216-17.

Such duty on the District Court was emphasized by the attack on the character of MOP management of NOTM in the petitions filed by the NOTM Bondholders Committee and Indenture Trustee (R. 87, 101).

The disposition of a parallel problem by the Circuit Court of Appeals for the Second Circuit in *Dudley* v. *Mealey, supra*, is pertinent.

In that case, Judge Learned Hand, speaking for the Court, condemned a Plan permitting a trustee to profit by its breach of fiduciary loyalty.

He stated that this was a matter "such that the judge might, and perhaps should, have taken notice * * * *sua sponte*". Judge Hand emphasized the Court's duty by directing it to "itself conduct the inquiry into the conduct of the * * * [Trustee, if the single isolated objector] should default" (147 F. (2d) at 270, 273).

In no event is laches applicable herein. The doctrine consists of two essential elements: lack of timeliness and prejudice. Neither element is present.

(c) Petitioner's objections were timely.

The order in issue of the District Court below was the first order of allowance of the MOP Claim. That the MOP Claim had not previously been allowed is clear from the form of such order which concluded that the MOP Claim "should be allowed" (R. 31). The Circuit Court below similarly recognized that not until the District Court order below had there ever been a "judicial determination upon the validity of the" MOP Claim (R. IV, 20-1). It affirmed, holding that "the claim of Missouri Pacific was properly allowed" (R. IV, 27).

(1) *Objections to a claim are timely before allowance.*

Allowance of a claim does not arise automatically from the filing of the proof of claim. A judicial order of allowance is necessary. Until such order, objections to the claim are timely.

In re Two Rivers Woodenware Co., 199 Fed. 877 (C. C. A. 7th, 1912).
In re Branner, 9 F. (2d) 883 (C. C. A. 2nd, 1925).
In re Tower Magazines, Inc., 16 F. Supp. 894 (M. D. Pa., 1936).

The two cases * cited by respondents for the proposition that laches may bar objections to a claim are not in point (Group Brief, p. 70). They relate to *allowed* claims, with a definitely established prejudicial change of position following upon allowance.

Such decisions have no relevance to the instant case involving the first judicial determination of a claim.

Petitioner was timely under the orders of the District Court as well.

Order No. 19 of the District Court prescribed the procedure for filing objections to claims in these proceedings. Such orders provided that the objections might be filed within the time fixed by the Special Master (R. 72). No limit has ever been fixed either by the Court or Special Master; † the time for filing has not expired.

---

* *In re American S. S. Nav. Co.*, 14 F. Supp. 106 (E. D. Pa., 1933), aff'd sub nom. *Cooper* v. *Rauch*, 82 F. (2d) 1005 (C. C. A. 3rd, 1936); *In re Nichols*, 166 Fed. 603 (N. D. N. Y., 1909).

† Other claims against the debtors in the instant proceedings were still undisposed of at the time of the hearings in the Court below (R. 257). The Special Master has died, and no successor has been appointed.

(2) *Objections to a claim may be made after allowance in the absence of a prejudicial change of position.*

Even if the MOP Claim be viewed as an allowed claim —a point of view which cannot be sustained—laches cannot apply.

Allowance of a claim, of itself, does not bar objections. Thus, order No. 235 of the District Court expressly established a procedure with respect to objections to allowed claims (R. 79). No time limit for filing such objections has ever been fixed.

Laches may be invoked to bar such objections only if allowance of a claim is followed by a prejudicial change in position.

Without prejudice, allowed claims may be reconsidered until the close of the estate.

> Section 57k, National Bankruptcy Act.
> Section 2a(2), National Bankruptcy Act.

Respondents, however, contend that Section 57k is inapplicable to the instant case (Group Brief, p. 79). At one point, they appear to say that Section 57k does not apply to Section 77. There is, however, no support for such a suggestion. Cf. *In re Denver & R. G. W. R. R.*, 27 F. Supp. 983 (D. Col., 1939); *National City Bank* v. *O'Connell*, 155 F. (2d) 329, 332 (C. C. A. 2nd, 1946).

Elsewhere, respondents appear to indicate that Section 57k cannot be applied because of petitioner's "dilatory conduct". Laches, however, is a question of prejudice as well as of delay.

Respondents, moreover, ignore Section 2a of the Bankruptcy Act, which this Court has held to be applicable to Section 77.

> *Continental Illinois N. B. & T. Co.* v. *Chicago, R. I., & P. R. R.*, 294 U. S. 648, 675-6 (1935) (Sec. 2a(15) case).

(d) There was no prejudice.

The mere lapse of time is insufficient to justify the application of laches. The lack of timeliness, if any, must be prejudicial.

Northern Pacific R. R. v. *Boyd*, 228 U. S. 482, 509 (1913).

Penn. Mutual Life Ins. Co. v. *Austin*, 168 U. S. 685, 698 (1898).

As this court said in the *Penn. Mutual Life Ins.* case:

> "The reason upon which the rule (of laches) is based is not alone the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court of equity finds that the position of the parties has so changed that equitable relief cannot be afforded without doing injustice or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect" (168 U. S. at 698).

Respondents have failed to demonstrate such injustice or change of position. Relying solely on the testimony of one witness—Mr. Railey—they contend that they have been prejudiced in only one respect: the presentation of the case in support of the MOP Claim. (R. 191-207, 744-62; Ex. 360-2) (Group Brief, pp. 67-71).

It is argued that records have been destroyed (Group Brief, p. 70). The District Court did not so find (R. 28). Mr. Railey was asked whether "all the records and books of account giving rise to * * * (the MOP) claim are available at the present time". He answered in the affirmative (R. 197, 203).

The only other basis of prejudice alleged by respondents is the death of several possible witnesses.

The death of material witnesses, or even of parties, does not of itself constitute sufficient prejudice to invoke laches.

Laches may be applied only if the death of such witnesses makes so much testimony unavailable that the Court is precluded from reaching a "safe" conclusion.

Bickel v. *Argyle Inv. Co.*, 343 Mo. 456, 121 S. W. (2d) 803, 807 (1938).

Consolidated Placers, Inc. v. *Grant*, 48 N. Mex. 340, 349, 151 P. (2d) 48, 54 (1944).

Shirley v. *Van Every*, 159 Va. 762, 167 S. E. 345 (1933).

Wood v. *Sanders*, 247 Ala. 492, 496, 25 So. (2d) 141 (1946).

Petitioner's case rests primarily on documentary evidence. These include corporate records, balance sheets, books of account, minutes and official reports submitted to the Commission. Consequently, the facts in this case are almost entirely undisputed, despite the size of the Record.

The District Court did not find the many hundred pages of testimony and the 180 exhibits in the Record insufficient to reach a "safe" conclusion. On the contrary, the District Court termed the evidence "extensive" and "voluminous" and adjudicated the MOP Claim on the merits (R. 1109). Its detailed findings of fact on the merits cover seventeen pages of the Record (R. 8-25).

After rejecting the contention of laches, the Circuit Court also adjudicated the claim on the merits. Thus, the Courts below unmistakeably demonstrated that the wealth of evidence before them was adequate for a "safe" adjudication on the merits.

This action of the Courts below disposes of the contention of laches.

The conduct of respondents themselves fortifies the conclusion that laches is inapplicable. Respondents have never suggested that the evidence is insufficient.* The

* Respondents themselves asserted in the Court below: "It is only reasonable to presume that all of the available facts relating to the intercompany claim are in the record" (Group Brief, C. C. A., p. 76).

number and character of the witnesses testifying for them in the District Court and respondents' decision not to call numerous other available witnesses affirmatively demonstrate that the death of a few possible witnesses caused no gaps in the testimony.

Respondents' main witness was Mr. William Wyer, Treasurer of MOP and NOTM and the architect of most of the transactions complained of. With his testimony covering 142 pages in the record, Mr. Wyer, testified in detail on MOP and NOTM financial affairs dating as far back as 1917 (R. 867-933, 960-1016, 1018-38).

There was hardly anything of a financial nature to which he did not testify. He even testified that he knew what was in the minds of MOP and NOTM directors, what information they looked at, and what governed their decisions (R. 985, 892, 912).

The District Court found:

> "He probably knows as well as anybody what was going on. * * * He was in touch with everything that was going on * * * " (R. 882).

Further detailed testimony on financial matters was given by Mr. Martin Eckert, general auditor after 1918 of NOTM, Brownsville and Beaumont. Mr. Eckert, whose testimony occupies almost 200 pages of the Record, testified that he had general supervision of the accounts and ledgers of these roads, as well as the reports submitted to the Commission, during the entire period of MOP control (R. 496-571, 629-37, 660-738, 790-814, 1040-61).*

---

* Other financial witnesses included Mr. Amos T. Cole, Treasurer and/or Assistant Secretary of NOTM from 1923 to 1933, Assistant Secretary of MOP in 1932, and occupying similar offices in NOTM subsidiaries throughout this period (Ex. 4-58; R. 403-406, 571-89). Another was Mr. Edwin Wagner, Assistant Secretary and Assistant Treasurer of NOTM and subsidiaries after 1926 (R. 589-95).

Nor was testimony received on financial matters alone. Messrs. Kirkpatrick, Rodgers, Brown and Bradley—men with up to thirty and forty years' experience with these roads—testified in detail on the physical condition and operations of MOP and NOTM, as far back as 1907 (R. 814-67, 933-60, 1016-18).

In addition, numerous other officers of MOP, NOTM and NOTM subsidiaries—participants in the transactions in issue—were available. The failure of respondents to call them can only mean that respondents did not believe that further testimony was necessary.

1. Mr. L. W. Baldwin had been President of MOP, NOTM and NOTM subsidiaries throughout this period. Petitioner called Mr. Baldwin to the stand. Respondents did not cross-examine Mr. Baldwin, nor call him subsequently as their own witness (R. 596-608). They assert that they did not want to divert Mr. Baldwin's attention to these matters during the War (Group Brief, p. 70). This is a bit disingenuous. They forget that Mr. Baldwin was an interested spectator during the course of the District Court hearings (R. 606).

If Mr. Baldwin could not have added to respondents' case, what could have been added by those of his subordinates who had died? There has been no suggestion that they knew more about it than he.

2. Mr. W. G. Vollmer had been assistant to Mr. Baldwin. His hand appears in many transactions. His name and initials appear on many of the letters introduced by petitioner relating to NOTM and Brownsville dividends (Ex. 125-31, 137, R. 600-1). Mr. Vollmer was present in the District Court (R. 653). Yet, he was not called by respondents.

3. Mr. Leonard P. Ayres, a member of the MOP and NOTM Executive Committees, was also present in the District Court (Ex. 33-58, R. 406). Mr. Ayres was very close to Mr. O. P. Van Sweringen, Chairman of the Board of MOP and NOTM, lunched with him daily, and knew his plans (*Senate Committee Hearings, supra,* 75th Cong., 1st Sess., Part 12, pp. 5209, 5431 (1938)). Respondents did not put Mr. Ayres on the witness stand.

4. Mr. Herbert Fitzpatrick had been Vice-President of MOP, NOTM, Brownsville and Beaumont (Ex. 39-61, R. 406). Mr. Wyer described him as the close friend and advisor of Mr. Van Sweringen (*Senate Committee Hearings, supra,* 74th Cong., 2nd Sess., Part 2, p. 582 [1938]). Mr. Fitzpatrick had undertaken to get Commission approval of MOP's applications to borrow from RFC, and of NOTM's application to issue one of the pledged notes (*Missouri Pacific R. R. Reconstruction Loan,* 189 I. C. C. 286, 342, 549; *New Orleans, T. & M. Ry. Notes,* 189 I. C. C. 600 [1933]). Respondents did not call Mr. Fitzpatrick.

Respondents, disregarding such available witnesses, complain of the death of others.

1. Thus, respondents point to the death of Mr. Safford, Vice-President of MOP and NOTM (Group Brief, pp. 67-68). Mr. Baldwin, who gave Mr. Safford his orders, was present in court. Mr. Railey admitted that Mr. Eckert had full knowledge of all the financial and auditing matters and that assistants to Mr. Safford were living (R. 756-757; R. 203). Respondents did not call any of them.

2. Another person whose death is complained of is another MOP and NOTM Vice-President, Mr. F. P. Johnson (Group Brief, p. 68). Respondents assert that Mr. Baldwin relied on Mr. Johnson for "information and advice". Respondents did not call Mr. Baldwin. Yet, they seek now to ascribe importance to Mr. Johnson because of his relationship to Mr. Baldwin. Secondly, respondents state that several letters with respect to NOTM dividends contained Mr. Johnson's initials. Mr. Baldwin's and Mr. Vollmer's initials and names appear on even more letters of that general character. Yet, respondents did not call either.

3. Respondents also complain of the death of Mr. O. P. Van Sweringen. They ignore the fact that Mr. Wyer, who testified at great length, had been Mr. Van Sweringen's assistant. Moreover, Mr. Ayres and Mr. Fitzpatrick, close associates of Mr. Van Sweringen, were available, but respondents failed to call them.

4. The death of Mr. Frank Andrews * is complained of. Mr. Andrews, however, was only one of "the lawyers and auditing department (to whom the MOP and NOTM Boards left it) to see that dividends * * * conformed with the requirements of the law" (Group Brief, pp. 32-33). The men who gave Mr. Andrews his orders, such as Mr. Baldwin, were available. The head of the auditing department, Mr. Eckert, testified at length. What could Mr. Andrews have added to these?

5. The death of Mr. E. J. White is complained of as well. Mr. Railey conceded that the knowledge of Mr. White was "rather restricted" (R. 760). Moreover, Mr. White's assistant from 1915 until bankruptcy was available; this assistant was none other than Mr. Railey, himself (R. 191).

Thus, respondents' own conduct of the trial demonstrates that the death of several witnesses did not interfere with the effective presentation of their case.

Laches accordingly can have no application herein.

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* Members of the firm of the general counsel of NOTM during the period of MOP control were not only available at the hearings, but were and are counsel for one of the respondents herein—the NOTM Bondholders Committee. Respondents did not call them.

POINT V

Petitioner's personal status does not prevent disallowance or subordination of the MOP Claim.

That petitioner's securities were acquired after bankruptcy at a discount does not place him beyond the pale of judicial protection.

There is no doctrine of law or equity which restricts the free marketability of securities of a corporation in reorganization. Throughout the period since bankruptcy, there has been a substantial turnover in MOP securities. Such subsequent purchasers acquire the rights of their assignors.

Cf. *Wade* v. *Chicago, S. P. St. L. R. R.*, 149 U. S. 327, 343 (1893).

In re Comstock, 154 Fed. 747 (D. R. I., 1907).

In re H. E. Page Motor Car Co., 251 Fed. 318 (D. Mass., 1918).

The personal status of an individual creditor is of little legal significance. Subordination of the MOP Claim will not benefit petitioner alone. It will benefit each and every publicly held MOP 5¼% Secured Bond in equal measure. The interest of an entire class of creditors is at stake.

In fact, the personal status of petitioner is unassailable. There has been no suggestion of fraud, bad faith or other misconduct on the part of petitioner.

Under such circumstances, no less than six different Circuit Courts of Appeal have rejected the contention that a creditor's purchase of bonds at less than face value during, or immediately before, reorganization, has any significance whatsoever with respect to his participation in the reorganization.

In re Pittsburgh Railways Co., 159 F. (2d) 630, 633 (C. C. A. 3rd, 1946), *cert. denied*, 331 U. S. 819 (1947).

Standard Gas & Electric Co. v. *Deep Rock Oil Corp.*, 117 F. (2d) 615, 619 (C. C. A. 10th, 1941), *cert. denied*, 313 U. S. 564 (1941).

In re Consolidated Rock Products Co., 114 F. (2d) 102, 107 (C. C. A. 9th, 1940), aff'd sub nom. *Consolidated Rock Products* v. *DuBois*, 312 U. S. 510 (1941).

Mokava Corp. v. *Dolan*, 147 F. (2d) 340, 344, 345 (C. C. A. 2nd, 1945).

In re Lorraine Castle Apartments Bldg. Corp., Inc., 149 F. (2d) 55 (C. C. A. 7th, 1945), *cert. denied*, 326 U. S. 728 (1945).

Texas Hotel Securities Corp. v. *Waco Development Co.*, 87 F. (2d) 395 (C. C. A. 5th, 1936), *cert. denied*, sub nom. *Waco Development Co.* v. *Rupe*, 300 U. S. 679 (1937).

Not merely one bondholder—but a substantial group—has joined in protecting the NOTM estate against the MOP Claim. Petitioner is also the representative of holders of over $900,000 principal amount of MOP 5¼% Secured Bonds (R. 227). Petitioner's objections to the MOP Claim have further been adopted by the Missouri Pacific R. R. Co. 5¼% Serial Bondholders Committee holding an additional $315,000 principal amount. (*Interstate Commerce Commission Report*, October 15, 1947, pp. 2-3.) This amounts to about 11½% of such bonds publicly outstanding.

As a matter of law, it is settled that the number of public investors who have taken upon themselves the burden of opposing the MOP Claim has no bearing in the case at bar.

Case v. *Los Angeles Lumber Products Co.*, 308 U. S. 106, 114-15 (1939) (holder of $18,500 of $2,565,000 bonds outstanding was the sole objector).

Dudley v. *Mealey*, 147 F. (2d) 268 (C. C. A. 2d, 1945), *cert. denied*, 325 U. S. 873 (1945) (holder of $1,000 of $1,120,000 bonds outstanding was the sole objector).

Controversies involving fiduciary claimants involve such fundamental principles of bankruptcy administration that there is a duty on the Court to act irrespective of the status or number of objectors.

POINT VI

The orders of the Courts below constitute the first adjudication of the MOP Claim. The District Court order on the 1940 Plan has no effect herein.

Respondents now argue for the first time that, since the invalidity or subordination of the MOP Claim might have been raised in connection with the 1940 Plan, the order of the District Court approving that Plan is final and conclusive with respect to these matters (Group Brief, p. 77).

In support of their contention, respondents cite cases involving the doctrine of *res judicata*.

These cases are not in point, since they were concerned solely with the effect to be given to final judgments.

The order on the 1940 Plan is not a final judgment, since it was rendered nugatory by the subsequent action of the Circuit Court in remanding the proceeding.*

In re Pennsylvania Central Brewing Co., 135 F. (2d) 60 (C. C. A. 3rd, 1943).

Leader v. *Apex Hosiery Co.*, 108 F. (2d) 71 (C. C. A. 3rd, 1939), *aff'd* 310 U. S. 469 (1940).

Bucher v. *Cheshire Railroad Co.*, 125 U. S. 555 (1888).

2 *Freeman on Judgments* (5th Ed., 1925) 1530.

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* *Missouri Pacific R. R.* v. *Protective Committee*, 135 F. (2d) 741 (C. C. A. 8th, 1943).

Because of such remand, the order on the 1940 Plan cannot even be considered as the law of the case.

Leader v. *Apex Hosiery Co.*, 108 F. (2d) 71 (C. C. A. 3rd, 1939), *aff'd* 310 U. S. 469 (1940).

In any event, the doctrine of the law of the case does not bar contentions which could have been, but were not, raised in connection with the prior proceeding.

Mutual Life Ins. Co. v. *Hill*, 193 U. S. 551 (1904).
Connett v. *City of Jerseyville*, 110 F. (2d) 1015 (C. C. A. 7th, 1940).
Chase v. *United States*, 261 Fed. 833 (C. C. A. 8th, 1919).

The District Court itself clearly did not regard its order on the 1940 Plan as constituting a bar. The District Court felt it necessary to try out the whole case on the merits and held that the claim "should be allowed" (R. 31).

Similarly, the Circuit Court stated in its opinion below: "No judicial determination upon the validity of the debt had ever been made * * *" (R. IV, 20), and then it also determined the issue on the merits.

POINT VII

This case is not moot.

This litigation is concerned with orders of allowance of the MOP Claim (see page 25, supra).

We have already demonstrated on pages 26-27 of our main brief how the hearing, order and appeal in this litigation were kept separate from the then pending Plan, and how petitioner's objections to the MOP Claim happened to arise in relation to such Plan.

The orders of allowance of the MOP Claim in issue will determine the ultimate disposition of the assets of MOP and NOTM, when the reorganization is concluded. Such orders patently have significance, irrespective of any particular plan.

Cf. *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307, 324 (1939).

The determination on the merits of this case will settle this matter for any future plan of reorganization. The case is therefore in no sense moot.

This is clearly demonstrated by the conclusion of Judge Learned Hand, speaking for the unanimous Circuit Court of Appeals for the Second Circuit in *Knight* v. *Wertheim*, 158 F. (2d) 838 (C. C. A. 2d, 1946), *cert. denied sub nom. McGuire* v. *Equitable Office Bldg. Corp.*, 331 U. S. 818 (1947).

Respondents conclude their brief with an appeal to this Court to bar consideration of the merits of the MOP Claim because of the length of time the debtor railroads have been in reorganization proceedings. However, the decision of this Court on the merits obviously will not involve any delay.

The delay in these reorganization proceedings has not been caused by petitioner or by the litigation on the intercompany claim.

Respondents bear the responsibility. Twice—in 1943 and 1947—they themselves abandoned plans of which they had been the leading proponents, and requested the Circuit Court of Appeals for the Eighth Circuit to remand the plans—approved by the District Court—to the Commission.

If any comment on this situation be called for, it should not be with respect to petitioner who has sought an adjudication of a claim asserted by a fiduciary parent against a dominated subsidiary deprived of the protection of an independent trustee.

CONCLUSION

It is respectfully submitted that the order and judgment of the Circuit Court of Appeals for the Eighth Circuit be reversed and that the cause be remanded with directions that the MOP Claim be disallowed or subordinated to the claims of the holders of MOP 5¼% Secured Serial Gold Bonds.

Respectfully submitted,

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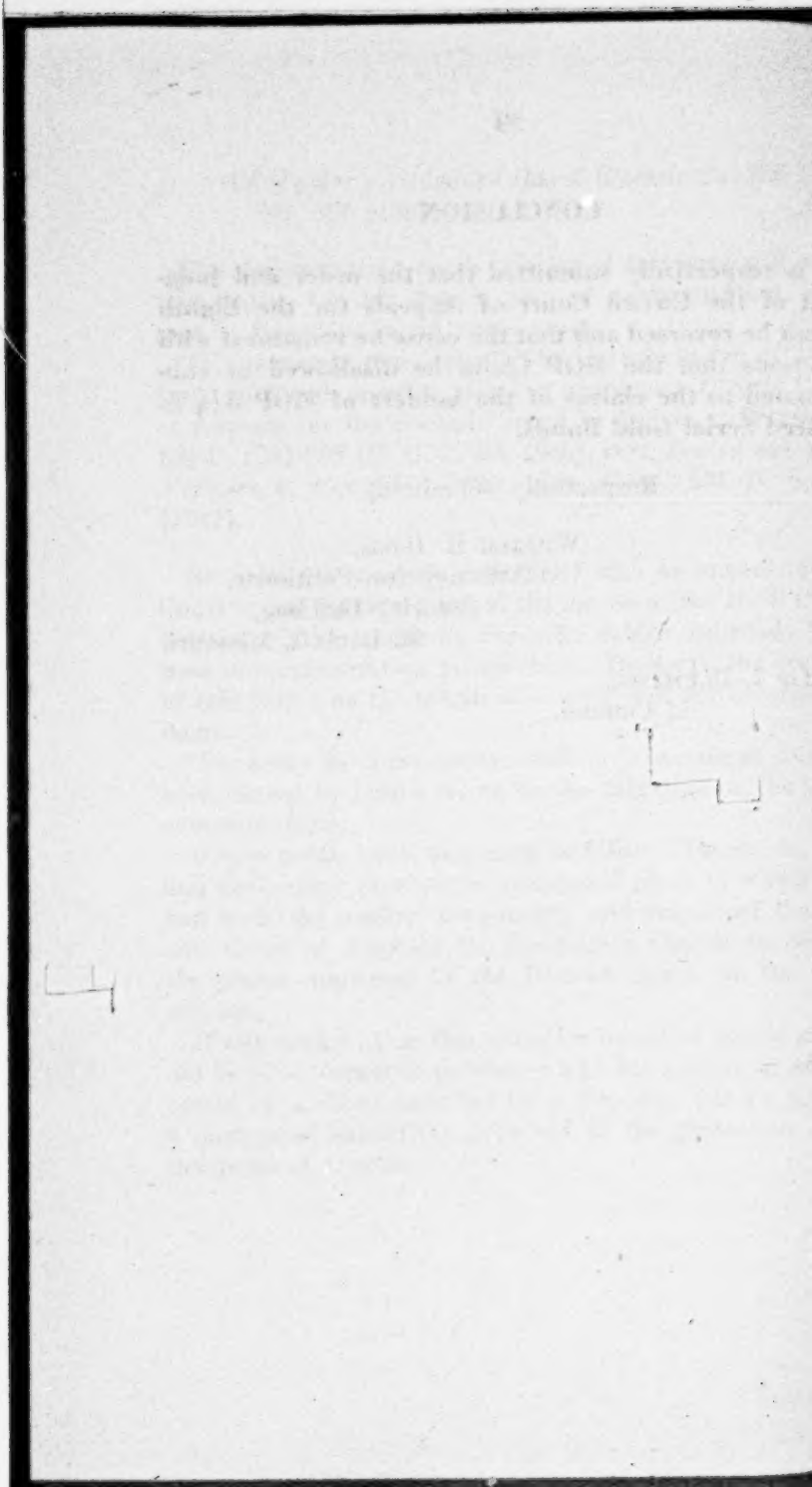

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

ANDREW W. COMSTOCK, ETC., *Petitioner,*

vs.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al., *Respondents.*

No. 451

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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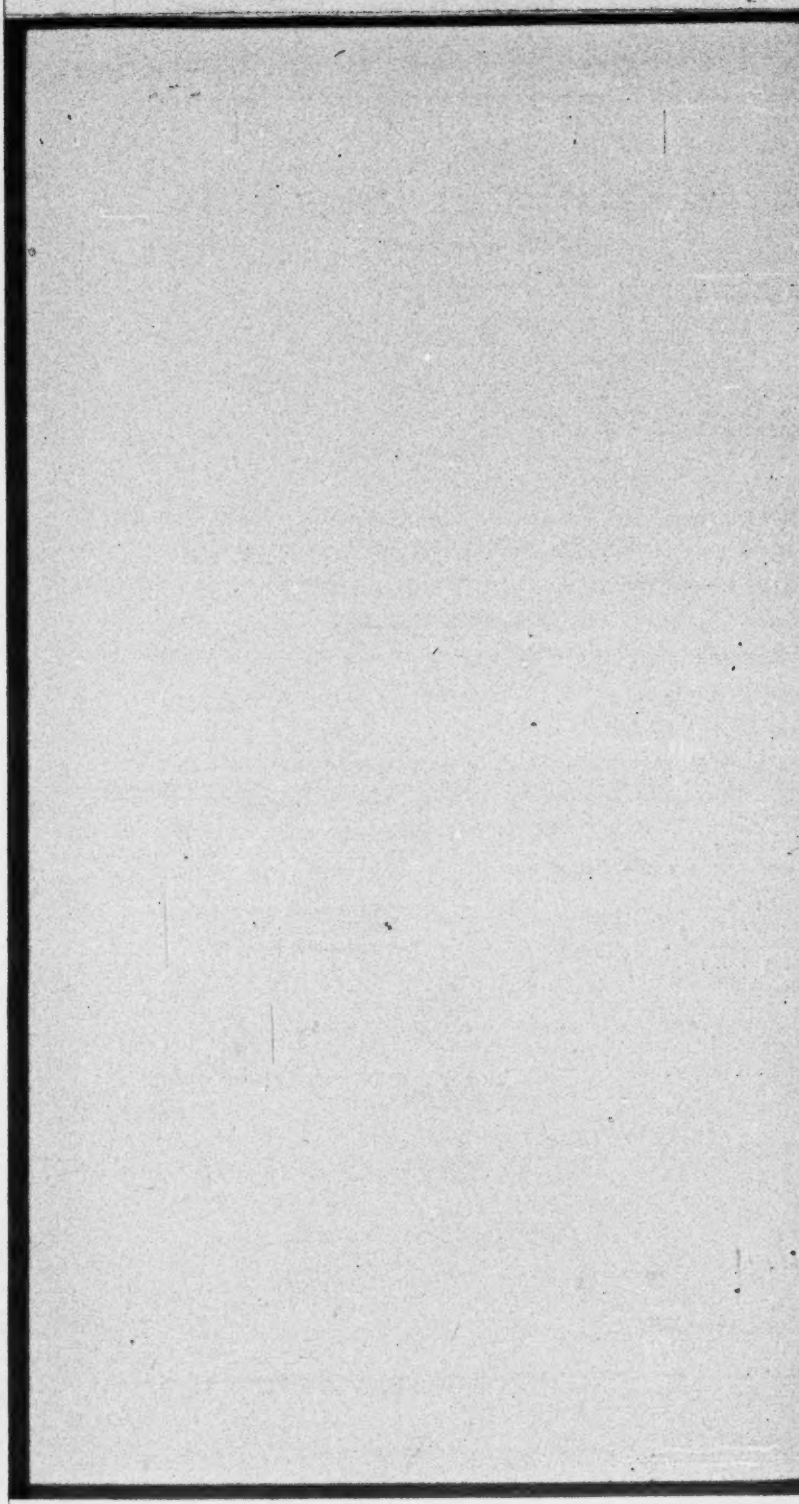

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Abbreviations Used in this Brief

CL.:	Conclusions of Law.
Commission:	Interstate Commerce Commission.
Courts below:	Circuit Court of Appeals for the Eighth Circuit and the District Court.
District Court:	District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.
Ex.:	The two volumes of exhibits contained in the transcript of the record. Arabic numerals following this abbreviation refer to the page number.

FF.:	Finding of fact.
Intercompany Claim:	The claim of the Missouri Pacific against the New Orleans filed in the reorganization proceedings in the principal sum of $10,565,226.78 (FF. 18, R. 18; Ex. 1).
Missouri Pacific:	Missouri Pacific Railroad Company, the principal debtor in the reorganization proceedings.
New Orleans:	New Orleans, Texas & Mexico Railway Company, a subsidiary of Missouri Pacific and a debtor in these proceedings.
R.:	The transcript of the record, excluding the two volumes of exhibits. Arabic numerals following this abbreviation refer to the page number.
R. IV:	The transcript of proceedings in the Circuit Court of Appeals for the Eighth Circuit and opinion.
RCC:	Railroad Credit Corporation.
RFC:	Reconstruction Finance Corporation.
Section 77:	Section 77 of the Bankruptcy Act (11 U.S.C.A. §205).
Secured Serial Bonds:	Missouri Pacific Railroad Company 5¼% Secured Serial Bonds.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, etc.,
Petitioner,

vs.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Respondents file this brief in opposition to the petition of Andrew W. Comstock for a writ of certiorari to review the decision of the Circuit Court of Appeals for the Eighth Circuit which affirmed a separate order of the District Court overruling Comstock's Objection 19 and held that the intercompany claim was valid and ranked in priority to the common stock of the New Orleans.

Opinions Below

Circuit Court —*Comstock* v. *Group of Institutional Investors, et al.*, 163 F. 2d 350 (C.C.A. 8th, 1947) (R. IV, 13-27).

District Court—*In re Missouri Pacific R.R. Co.*, 64 F. Supp. 64 (E.D. Mo. 1945) (R. 1089).

Jurisdiction

Petitioner invokes the jurisdiction of this Court under Section 240(a) of the Judicial Code, as amended. 28 U.S. C.A. §347(a).

POINT I

The petition fails to set forth grounds for the exercise by this Court of its discretionary power to review the decision of the Circuit Court of Appeals.

A. The Petition presents a factual controversy upon which two courts have ruled adversely to the Petitioner.

The District Court made detailed and specific findings of fact (R. 8-30). In his appeal to the Circuit Court of Appeals the petitioner made 115 assignments of error in his points on appeal, most of which pertained to the findings of fact of the District Court (R. 40). However, in his brief and in argument before the Circuit Court of Appeals the petitioner made no effort to sustain his assignments of error as to the findings of fact. Instead he proceeded to argue his case upon his own statement of the facts which differed radically from the findings made by the District Court. The Circuit Court of Appeals recognized that it was bound by the District Court's findings unless they

were shown to be clearly erroneous (Federal Rules of Civil Procedure, Rule 52(a)). After careful examination of the record the Circuit Court of Appeals concluded that the findings of fact should not be disturbed. With respect to these matters the opinion of the Circuit Court of Appeals, referring to Judge Moore who presided in the District Court proceedings, states:

> "* * * His findings of facts and conclusions of law were drawn with care and thoroughness, and appear to us to be responsive to all the issues presented by the objections here involved and the evidence that was adduced, and the appellant has not called our attention to any refusal on the part of the court to make findings in respect to any other issues claimed to have been presented. * * * (R. IV, 23)
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> "On this appeal the case is stated for the appellant in substantial disregard of the findings of the trial court and practically as though the case was here to be tried by this court de novo on the voluminous evidence. This court must decline to assume that function. We may not set aside the findings of facts which have been made by the trial court, who in this case had more than ordinary opportunity to judge of the credibility of the witnesses, unless such findings were clearly erroneous. F.R.C. 52a; General Orders in Bankruptcy Nos. 36 and 49, 11 U.S.C.A. following Section 53. Though we have considered the appeal sufficient in form to require a complete study of the record and evidence, we are forbidden by the rule to upset those findings which are supported by substantial evidence and are not clearly erroneous nor induced by error of law. * * * " (R. IV, 25-26)

The petitioner in his petition for certiorari and brief has proceeded in much the same manner as he did in the Circuit Court of Appeals. He has stated his own version of the facts in "substantial disregard" of the findings of

fact. It is significant that in his petition for certiorari and brief there is only one citation to the findings of fact and only one additional reference to them is made. The petitioner's brief asserts:

> "Petitioner seeks no re-examination of the facts. To a remarkable extent the facts, *arising* almost entirely from books of account and corporate records, are undisputed." (Italics supplied) (Brief, 33)

Heretofore petitioner has been unwilling to accept the facts as shown in the books of account and records to which he refers. He has contended throughout that the books and records in evidence were improperly kept and concealed the true condition of the New Orleans (R. 240, 516; Par. 73, R. 50). The statement of facts in the petition and brief, which conflicts in many important respects with the findings of fact, is a refutation of the petitioner's assertion that there is no dispute as to the evidence. It is clear that the petitioner is unwilling to present his case to this Court on the facts as found in the District Court. Of necessity this is true. The findings of fact of the District Court do not warrant the granting of the subordination which the petitioner seeks.

A petition for review which merely presents what is essentially a factual controversy fails to state grounds which justify this Court in exercising its power to grant a review.

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This is especially true where the petitioner fails to point out wherein the trial court erred in making findings of fact.

B. No Conflict of Decisions is Presented.

The petitioner contends that the decision of the Circuit Court of Appeals is in conflict with a decision of the Circuit Court of Appeals for the Seventh Circuit in *In re Commonwealth Light & Power Co.*, 141 F. 2d 734 (1944) and with the decision of this Court in *Taylor* v. *Standard Gas & Electric Co.*, 306 U.S. 307 (1939). (See Questions 1, 2 and 3, Petition pp. 13-14 and Reasons 1, 2 and 3, Petition pp. 14-15.)

This contention is based in part on petitioner's assertion that the decision in each of these cases required subordination of the claim of an insolvent parent against a subsidiary (Questions 2 and 3; Petition pp. 14, 28). The petitioner has misconceived the decision of the courts below. The holding was that the Missouri Pacific in its dealings with the New Orleans had complied with its fiduciary obligations as a controlling stockholder (CL. 11, 13, R. 32, 33; FF. 33, R. 24-25). Because there was no ground for subordination, it was unnecessary for the courts below to decide the interesting questions set forth in paragraphs 2 and 3 at page 14 of the petition.

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A brief supplemental statement of the facts dealt with in the cases relied on by petitioner will demonstrate how widely they differ from the facts in the instant case.

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No such facts exist in the instant case.* Quite the contrary is shown. The Missouri Pacific control resulted in substantial benefits to the New Orleans. Its competitive position was strengthened (FF. 10, 11 and 12, R. 13-15), its properties greatly improved (FF. 9, R. 13), efficiency of operations increased (FF. 10 and 12, R. 13-15; R. 820, 821, 830 and 831; Ex. 249) and a foundation was laid which enabled the New Orleans expeditiously and profitably to handle the great increase in traffic which occurred during the War and thereafter (R. IV, 26; R. 1015). In further contrast to the situation in the *Deep Rock* case, the courts below found that the Missouri Pacific in its dealings with the New Orleans was careful to observe its fiduciary obligations as controlling stockholder (FF. 13-16, 33, R. 15-17, 24 and 25; CL. 11 and 13, R. 32 and 33).

In the *Commonwealth* case, the parent, Inland, sold an issue of bonds, referred to in the opinion as the "Inland bonds", which were secured by the pledge of all of the outstanding common stocks of five subsidiary operating companies, including Michigan. The balance sheet of Michigan at its organization represented this stock as having a stated value of $1,250,000 (141 F. 2d, at 738). The fact was, however, that if an initial unjustified write-up of $1,966,509 had been eliminated, Michigan's indebtedness would have exceeded the investment in the properties involved to the extent of $162,069. Against this investment of $2,203,845, Michigan had outstanding $2,000,000

* The so-called "saddling transaction", set forth beginning at page 9 of the petition, is an attempt to show improper conduct on the part of the Missouri Pacific. The statement of this transaction is incomplete and contains important errors. There is no citation to the specific findings with reference to this transaction (FF. 28, R. 22) and no attempt is made to show that the findings are incorrect.

of bonds and owed its parent, Inland, $365,914 (*ibid.*, at 737). This initial deficiency in the stated value of the stock wronged the Inland bondholders and was never corrected. Every loan thereafter made to Michigan and every dividend which it declared merely served to aggravate the original wrong done to the Inland bondholders.

Nothing comparable to these facts can be shown in the instant case. The consolidated balance sheet of the New Orleans and its subsidiaries as of December 31, 1925, the year in which it assumed control of the New Orleans, shows total assets of $60,000,000, capital of $15,000,000 and surplus of $7,000,000 (R. 266, 267). The consolidated balance sheet of the New Orleans and its subsidiaries as of August 31, 1931, near the end of the dividend paying period, shows total assets of $87,000,000, capital of $15,000,000 and surplus of approximately $8,000,000 (R. 81). As stated by the court below, the stock of the New Orleans pledged to secure the petitioner's Secured Serial Bonds "has been kept intact through depressions which wiped out vast amounts of such securities and of recognised value"* (R. IV, 27).

In his statements with reference to the intercompany claim and the adequacy of the capitalization of the New Orleans, the petitioner entirely omits to mention the supervision which the Commission exercised over the New Orleans under Section 20a of the Transportation Act (49 U.S.C.A. §20a). During the period of Missouri Pacific control, the New Orleans could not issue any of its First Mortgage Bonds without Commission approval. Issuance of the note representing $7,456,726 of the intercompany claim was authorized by the Commission under Section

* At the end of November, 1947, the New Orleans Common Stock was quoted at 105 bid, 112 asked and the Secured Serial Bonds were quoted at 106 bid, 108 asked (Bank and Quotation Record (W. B. Dana Co., New York, Dec. 6, 1947) pp. 53, 55).

20a (R. 86, 20839-20840). *New Orleans, Texas & Mexico Railway Company Notes*, Finance Docket No. 9817; 189 I.C.C. 600 (1933). In passing on the propriety of such authorization, the Commission was advised of the remaining notes evidencing the balance of the intercompany claim which had been issued under Section 20a(9). In granting such authority the Commission was required to and did find

> "* * * that such issue * * *: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose." (49 U.S.C.A. §20a(2))

The courts below understood the rule of the *Deep Rock* and *Commonwealth* cases. Those cases involved a long history of mismanagement and faithless stewardship. In the instant case the courts below found the opposite to be true (FF. 33, R. 24; CL. 11, 13, R. 32-33). It seems clear that the conflict of decisions asserted by the petitioner "arises from differences in states of fact and not in the application of a principle of law." Accordingly, no question is presented which would warrant the granting of the writ.

C. The Contention that the New Orleans should have a Separate Trustee Presents no Important Question.

Point V of the petitioner's brief seems to suggest that a separate trustee for the New Orleans should be appointed, that he conduct a re-examination of the facts and that there be a new trial of the issues. Presumably the petitioner

would suspend the proceedings on the plan of reorganization, now scheduled for hearing before the Commission on January 27th next, while the issues revolving about the intercompany claim are being redetermined. This would almost inevitably be the result of following such a procedure since it would be difficult to formulate a plan without determination of the position of the intercompany claim among the hierarchy of claims. Such a result would not be in the public interest or in the interest of any of the creditors.

Neither the appointment of a separate trustee nor a retrial of the issues is necessary. The findings show that Mr. Thompson, as Trustee, made a very full and careful examination in the fulfillment of his duty under Section 77(c)(9) (FF. 34-37, 39, R. 25-27; CL. 17, R. 33). Moreover, the petitioner was given every opportunity both before and at the trial of the issues to obtain all of the available information bearing on his case (FF. 44, R. 29). This controversy involving the intercompany claim has already taken up a disproportionate amount of time in these proceedings. To further delay the reorganization by another trial of the same issues is unthinkable.

The petitioner fails to specify with any degree of particularity how he has been prejudiced by the fact that Mr. Thompson occupies dual offices. It is not asserted that Mr. Thompson has failed to act impartially or that his investigation pursuant to Section 77(c)(9) was inadequate.

Upon analysis Point V of the petitioner's brief presents no substantial issue of fact or of law. It is a mere complaint against Mr. Thompson, as Trustee, which, because of its errors and omissions, is not supported by the findings or the evidence. Certainly it presents no important question which would justify granting the writ.

POINT II

Determination in favor of the Petitioner of the questions presented by the petition will not result in a reversal of the decisions below.

This Court will consider only questions presented by the petition.

> Supreme Court Rules, Rule 38(2);
> *General Talking Pictures Corp.* v. *Western Electric Co., et al.*, 304 U.S. 175, 177-179 (1938);
> *Connecticut Railway & Lighting Co.* v. *Palmer, et al.*, 305 U.S. 493, 496 (1939).

The decisions below are based on two separate grounds not included in the four questions set forth on pages 13 and 14 of the petition. The omission of these grounds from the petition is tantamount to a concession by petitioner that they are not of such a nature as to justify granting the writ.

One of these grounds is laches (FF. 34-45, R. 25-29; CL. 15, R. 33; R. IV, 20, 23). The holding that the petitioner is barred by laches completely disposes of his case and is in itself a sufficient basis for the decisions below. The other separate ground on which the decisions below were based rests upon the District Court's findings that the RFC and RCC were bona fide pledgees for value of $9,555,226.78 principal sum of the intercompany claim (CL. 3, 4 and 7, R. 30, 31). Although the RFC and RCC claims have since been paid, the order authorizing payment subrogated the First and Refunding Mortgage bondholders and other Missouri Pacific creditors to the extent of their interest (R. 1188, Ex. 335-357), to the lien of the RFC and

the RCC on the pledged collateral, including the pledged portion of the intercompany claim (R. 1157 and 1165).

Thus, a determination in favor of the petitioner of the questions presented in the petition for certiorari will not result in a reversal of the order overruling the petitioner's Objection 19. It is not believed that this Court will wish to add to its already crowded docket a case which presents questions, the answering of which will not decide the ultimate issue. Boskey, *Mechanics of the Supreme Court's Certiorari Jurisdiction*, 46 Col. L.R. 255, 259 (1946).

CONCLUSION

The petition should be denied.

Respectfully submitted,

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ROOT, BALLANTINE, HARLAN, BUSHBY & PALMER,
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Paul Brown Building, St. Louis, Mo.

HARRY KIRSHBAUM,
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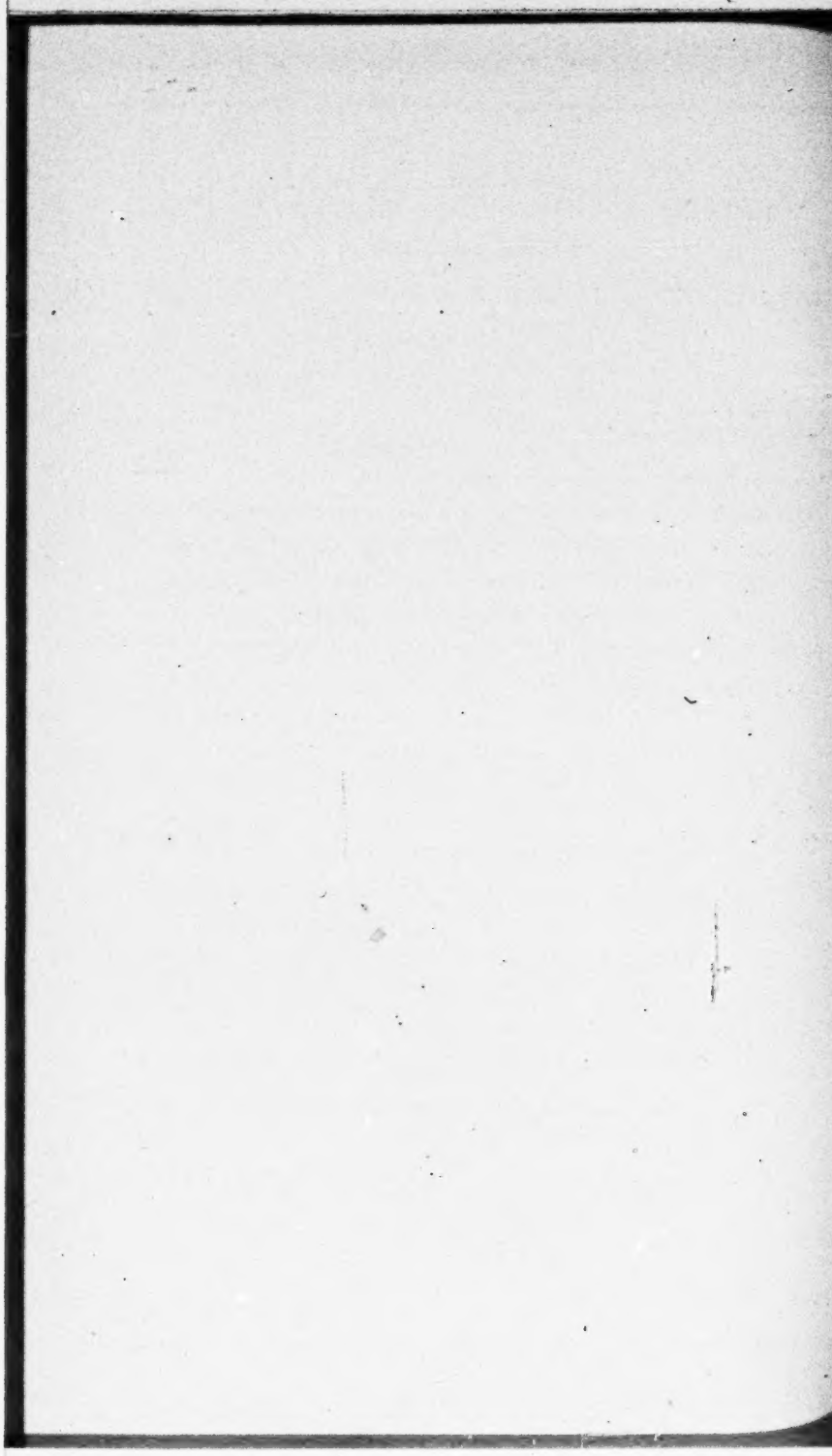
Attorneys for Missouri Pacific Convertible Bondholders Group.

Dated: December 12, 1947.



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Abbreviations Used in this Brief

CL.:	Conclusions of Law.
Commission:	Interstate Commerce Commission.
Courts below:	Circuit Court of Appeals for the Eighth Circuit and the District Court.
District Court:	District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.
Ex.:	The two volumes of exhibits contained in the transcript of the record. Arabic numerals following this abbreviation refer to the page number.

FF.:	Finding of fact.
Intercompany Claim:	The claim of the Missouri Pacific against the New Orleans filed in the reorganization proceedings in the principal sum of $10,565,226.78 (FF. 18, R. 18; Ex. 1).
Missouri Pacific:	Missouri Pacific Railroad Company, the principal debtor in the reorganization proceedings.
New Orleans:	New Orleans, Texas & Mexico Railway Company, a subsidiary of Missouri Pacific and a debtor in these proceedings.
R.:	The transcript of the record, excluding the two volumes of exhibits. Arabic numerals following this abbreviation refer to the page number.
R. IV:	The transcript of proceedings in the Circuit Court of Appeals for the Eighth Circuit and opinion.
RCC:	Railroad Credit Corporation.
RFC:	Reconstruction Finance Corporation.
Section 77:	Section 77 of the Bankruptcy Act (11 U.S.C.A. §205).
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IN THE

upreme Court of the United States

OCTOBER TERM, 1947

No. 451

ANDREW W. COMSTOCK, etc.,
Petitioner,

vs.

UP OF INSTITUTIONAL INVESTORS, holding irst and Refunding Mortgage 5% Gold onds of Missouri Pacific Railroad Com-ny, et al.,
Respondents.

RIEF IN OPPOSITION TO PETITION FOR WRIT OF ERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Respondents file this brief in opposition to the petition ndrew W. Comstock for a writ of certiorari to review lecision of the Circuit Court of Appeals for the Eighth uit which affirmed a separate order of the District rt overruling Comstock's Objection 19 and held that intercompany claim was valid and ranked in priority ne common stock of the New Orleans.

Opinions Below

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District Court—*In re Missouri Pacific R.R. Co.*, 64 F. Supp. 64 (E.D. Mo. 1945) (R. 1089).

Jurisdiction

Petitioner invokes the jurisdiction of this Court under Section 240(a) of the Judicial Code, as amended. 28 U.S. C.A. §347(a).

POINT I

The petition fails to set forth grounds for the exercise by this Court of its discretionary power to review the decision of the Circuit Court of Appeals.

A. The Petition presents a factual controversy upon which two courts have ruled adversely to the Petitioner.

The District Court made detailed and specific findings of fact (R. 8-30). In his appeal to the Circuit Court of Appeals the petitioner made 115 assignments of error in his points on appeal, most of which pertained to the findings of fact of the District Court (R. 40). However, in his brief and in argument before the Circuit Court of Appeals the petitioner made no effort to sustain his assignments of error as to the findings of fact. Instead he proceeded to argue his case upon his own statement of the facts which differed radically from the findings made by the District Court. The Circuit Court of Appeals recognized that it was bound by the District Court's findings unless they

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of bonds and owed its parent, Inland, $365,914 (*ibid.*, at 737). This initial deficiency in the stated value of the stock wronged the Inland bondholders and was never corrected. Every loan thereafter made to Michigan and every dividend which it declared merely served to aggravate the original wrong done to the Inland bondholders.

Nothing comparable to these facts can be shown in the instant case. The consolidated balance sheet of the New Orleans and its subsidiaries as of December 31, 1925, the year in which it assumed control of the New Orleans, shows total assets of $60,000,000, capital of $15,000,000 and surplus of $7,000,000 (R. 266, 267). The consolidated balance sheet of the New Orleans and its subsidiaries as of August 31, 1931, near the end of the dividend paying period, shows total assets of $87,000,000, capital of $15,000,000 and surplus of approximately $8,000,000 (R. 81). As stated by the court below, the stock of the New Orleans pledged to secure the petitioner's Secured Serial Bonds "has been kept intact through depressions which wiped out vast amounts of such securities"* (R. IV, 27).

In his statements with reference to the intercompany claim and the adequacy of the capitalization of the New Orleans, the petitioner entirely omits to mention the supervision which the Commission exercised over the New Orleans under Section 20a of the Transportation Act (49 U.S.C.A. §20a). During the period of Missouri Pacific control, the New Orleans could not issue any of its First Mortgage Bonds without Commission approval. Issuance of the note representing $7,456,726 of the intercompany claim was authorized by the Commission under Section

* At the end of November, 1947, the New Orleans Common Stock was quoted at 105 bid, 112 asked and the Secured Serial Bonds were quoted at 106 bid, 108 asked (Bank and Quotation Record (W. B. Dana Co., New York, Dec. 6, 1947) pp. 53, 55).

20a (R. 86, 20839-20840). *New Orleans, Texas & Mexico Railway Company Notes,* Finance Docket No. 9817; 189 I.C.C. 600 (1933). In passing on the propriety of such authorization, the Commission was advised of the remaining notes evidencing the balance of the intercompany claim which had been issued under Section 20a(9). In granting such authority the Commission was required to and did find

> "* * * that such issue * * *: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose." (49 U.S.C.A. §20a(2))

The courts below understood the rule of the *Deep Rock* and *Commonwealth* cases. Those cases involved a long history of mismanagement and faithless stewardship. In the instant case the courts below found the opposite to be true (FF. 33, R. 24; CL. 11, 13, R. 32-33). It seems clear that the conflict of decisions asserted by the petitioner "arises from differences in states of fact and not in the application of a principle of law." Accordingly, no question is presented which would warrant the granting of the writ.

C. The Contention that the New Orleans should have a Separate Trustee Presents no Important Question.

Point V of the petitioner's brief seems to suggest that a separate trustee for the New Orleans should be appointed, that he conduct a re-examination of the facts and that there be a new trial of the issues. Presumably the petitioner

would suspend the proceedings on the plan of reorganization, now scheduled for hearing before the Commission on January 27th next, while the issues revolving about the intercompany claim are being redetermined. This would almost inevitably be the result of following such a procedure since it would be difficult to formulate a plan without determination of the position of the intercompany claim among the hierarchy of claims. Such a result would not be in the public interest or in the interest of any of the creditors.

Neither the appointment of a separate trustee nor a retrial of the issues is necessary. The findings show that Mr. Thompson, as Trustee, made a very full and careful examination in the fulfillment of his duty under Section 77(c)(9) (FF. 34-37, 39, R. 25-27; CL. 17, R. 33). Moreover, the petitioner was given every opportunity both before and at the trial of the issues to obtain all of the available information bearing on his case (FF. 44, R. 29). This controversy involving the intercompany claim has already taken up a disproportionate amount of time in these proceedings. To further delay the reorganization by another trial of the same issues is unthinkable.

The petitioner fails to specify with any degree of particularity how he has been prejudiced by the fact that Mr. Thompson occupies dual offices. It is not asserted that Mr. Thompson has failed to act impartially or that his investigation pursuant to Section 77(c)(9) was inadequate.

Upon analysis Point V of the petitioner's brief presents no substantial issue of fact or of law. It is a mere complaint against Mr. Thompson, as Trustee, which, because of its errors and omissions, is not supported by the findings or the evidence. Certainly it presents no important question which would justify granting the writ.

POINT II

Determination in favor of the Petitioner of the questions presented by the petition will not result in a reversal of the decisions below.

This Court will consider only questions presented by the petition.

> Supreme Court Rules, Rule 38(2);
> *General Talking Pictures Corp.* v. *Western Electric Co., et al.*, 304 U.S. 175, 177-179 (1938);
> *Connecticut Railway & Lighting Co.* v. *Palmer, et al.*, 305 U.S. 493, 496 (1939).

The decisions below are based on two separate grounds not included in the four questions set forth on pages 13 and 14 of the petition. The omission of these grounds from the petition is tantamount to a concession by petitioner that they are not of such a nature as to justify granting the writ.

One of these grounds is laches (FF. 34-45, R. 25-29; CL. 15, R. 33; R. IV, 20, 23). The holding that the petitioner is barred by laches completely disposes of his case and is in itself a sufficient basis for the decisions below. The other separate ground on which the decisions below were based rests upon the District Court's findings that the RFC and RCC were bona fide pledgees for value of $9,555,226.78 principal sum of the intercompany claim (CL. 3, 4 and 7, R. 30, 31). Although the RFC and RCC claims have since been paid, the order authorizing payment subrogated the First and Refunding Mortgage bondholders and other Missouri Pacific creditors to the extent of their interest (R. 1188, Ex. 335-357), to the lien of the RFC and

the RCC on the pledged collateral, including the pledged portion of the intercompany claim (R. 1157 and 1165).

Thus, a determination in favor of the petitioner of the questions presented in the petition for certiorari will not result in a reversal of the order overruling the petitioner's Objection 19. It is not believed that this Court will wish to add to its already crowded docket a case which presents questions, the answering of which will not decide the ultimate issue. Boskey, *Mechanics of the Supreme Court's Certiorari Jurisdiction*, 46 Col. L.R. 255, 259 (1946).

CONCLUSION

he petition should be denied.

Respectfully submitted,

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: December 12, 1947.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

ANDREW W. COMSTOCK, holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, etc.,
Petitioner,

against

GROUP OF INSTITUTIONAL INVESTORS HOLDING FIRST AND REFUNDING MORTGAGE 5% GOLD BONDS, ETC., ET AL.,
Respondents.

No. 451

BRIEF

OF

THE GROUP OF INSTITUTIONAL INVESTORS HOLDING FIRST AND REFUNDING MORTGAGE BONDS OF MISSOURI PACIFIC RAILROAD COMPANY,

MANUFACTURERS TRUST COMPANY, AS CORPORATE TRUSTEE UNDER THE FIRST AND REFUNDING MORTGAGE OF MISSOURI PACIFIC RAILROAD COMPANY

AND

BONDHOLDERS PROTECTIVE COMMITTEE FOR MISSOURI PACIFIC RAILROAD COMPANY GENERAL MORTGAGE BONDS,

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* References too numerous for effective citation. Pertinent portions of subdivisions (d) and (e) of Section 77 are printed in Appendix I.

ABBREVIATIONS USED IN THIS BRIEF

Beaumont:	The Beaumont, Sour Lake Western Railway Company, a subsidiary of New Orleans and a debtor in these proceedings.
Brownsville:	The St. Louis, Brownsville & Mexico Railway Company, a subsidiary of New Orleans and a debtor in these proceedings.
CL:	Conclusion of Law.
Commission:	Interstate Commerce Commission.
Court below	Circuit Court of Appeals for the Eighth Circuit.
District Court:	United States District Court, Eastern Division, Eastern Judicial District of Missouri.
Ex.:	The two volumes of exhibits contained in the transcript of the record. Arabic numerals following this abbreviation refer to the page number.
FF:	Finding of fact.
First and Refunding Bonds:	Missouri Pacific Railroad Company First and Refunding Mortgage 5% Bonds.
GCL:	Gulf Coast Lines. Unless otherwise indicated, this term refers to New Orleans and its fourteen subsidiaries listed in Ex. 98. The term does not include the I-GN.
General Mortgage Bonds:	Missouri Pacific Railroad Company General Mortgage 4% Gold Bonds.
Group:	The Group of Institutional Investors holding First and Refunding Mortgage 5% Bonds of Missouri Pacific Railroad Company.
I-GN:	International-Great Northern Railroad Company, a subsidiary of New Orleans and a debtor in these proceedings.
Intercompany claim:	The claim of the Missouri Pacific against the New Orleans filed in the reorganization proceedings in the principal sum of $10,565,226.78 (FF. 18, R. 18; Ex. 1).

uri Pacific:	Missouri Pacific Railroad Company, the principal debtor in these reorganization proceedings.
Orleans:	New Orleans, Texas & Mexico Railway Company, a subsidiary of Missouri Pacific and a debtor in these proceedings.
	The transcript of the record, excluding the two volumes of exhibits and record volume IV. Arabic numerals following this abbreviation refer to the page number.
:	The transcript of proceedings in the Circuit Court of Appeals and Opinion.
	Railroad Credit Corporation.
	Reconstruction Finance Corporation.
on 77:	Section 77 of the Bankruptcy Act (11 USCA §205).
ed Serial nds:	Missouri Pacific Railroad Company, 5¼% Secured Serial Gold Bonds.
Plan:	The Plan of Reorganization set forth in the Supplemental Order of the Commission dated April 9, 1940 [239 ICC 7]
Plan:	The Plan of Reorganization set forth in the Third Supplemental Order of the Commission dated October 9, 1944 [R. 20894-20968].

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

ANDREW W. COMSTOCK, holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, etc.,

Petitioner,

against

GROUP OF INSTITUTIONAL INVESTORS HOLDING FIRST AND REFUNDING MORTGAGE 5% GOLD BONDS, etc., *et al.*,

Respondents.

No. 451

BRIEF

OF

THE GROUP OF INSTITUTIONAL INVESTORS HOLDING FIRST AND REFUNDING MORTGAGE BONDS OF MISSOURI PACIFIC RAILROAD COMPANY,

MANUFACTURERS TRUST COMPANY, AS CORPORATE TRUSTEE UNDER THE FIRST AND REFUNDING MORTGAGE OF MISSOURI PACIFIC RAILROAD COMPANY

AND

BONDHOLDERS PROTECTIVE COMMITTEE FOR MISSOURI PACIFIC RAILROAD COMPANY GENERAL MORTGAGE BONDS,

RESPONDENTS.

Opinions Below.

Circuit Court —*Comstock* v. *Group of Institutional Investors, et al.*, 163 F. 2d 350 (C.C.A. 8th, 1947). (R. IV, 13-27)

District Court—*In re Missouri Pacific R.R. Co.*, 64 F. Supp. 64 (E.D. Mo. 1945) (R. 1089)

Jurisdiction.

Petitioner invokes the jurisdiction of this Court under Section 240(a) of the Judicial Code, as amended. 28 USCA §347(a).

Preliminary Statement.

There are two matters which require consideration before taking up the facts.

Nature of the Proceedings.

These are proceedings for the reorganization under Section 77 of the Missouri Pacific, the New Orleans and affiliated railroad corporations. Pursuant to Section 77(d), the Commission certified a second plan of reorganization in October 1944. (R. 20892) Petitioner, Comstock, and others filed a number of objections to the 1944 Plan. Comstock's Objection 19 (R. 232, 237-247) asserted that the 1944 Plan was unfair and inequitable because, in the allocation of new securities to the Secured Serial Bonds, the Commission failed to treat the intercompany claim as invalid or subordinate to the New Orleans capital stock.[1] In January and March 1945, the district court held hearings[2] on objections to the 1944 Plan as required by Section 77(e). In accordance with the opinion of the district court (R. 1089) two orders were entered on January 22, 1946; one, No. 2604-A (R. 34), overruling Comstock's Objection 19, and the other, No. 2604-B (R. 1126), approving the 1944 Plan generally. The writ herein was granted

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[1] Other Comstock objections, numbered 1-8, 13 and 26, are based in whole or in part upon his Objection 19. (R. 228-230, 231, 234)

[2] At the close of Petitioner's case the hearing on Objection 19 was separated from the hearing on other objections to the Plan. (R. 378, 714-723)

to review an order of the court below (R. IV, 28), entered on August 28, 1947, affirming Order No. 2604-A.[1]

Petitioner's brief treats the proceedings in the district court involving his Objection 19 as if they were hearings on objections to the intercompany claim. The Petitioner persisted in this attitude at the hearing despite the refusal of the district court to so narrowly limit the issues. (R. 386-390, 585, 694, 711-712, 714-735) Order No. 2604-A is based only in part upon a conclusion of law that the intercompany claim ought to be allowed. (CL. 8, R. 31) The district court in overruling Objection 19 determined a more comprehensive issue, namely, that, in so far as that objection is concerned, the 1944 Plan is fair and equitable. (CL. 18, R. 33-34)

At the request of the court below, the Commission filed a brief in the appeals from Order No. 2604-B approving the 1944 Plan generally, suggesting that, because of substantial changes in conditions, said Plan required further review by the Commission. On September 9, 1947—two years and eleven months after the Commission certified the 1944 Plan—the court below, pursuant to the suggestion of the Commission and with the approval of the appellants and appellees, entered an order vacating and setting aside Order No. 2604-B and directing that the district court return the 1944 Plan to the Commission for "further investigation, consideration and recommendation".[2] Further hearings on the plan before the Commission are scheduled to begin on March 23, 1948.

---

[1] Writs were also granted to review three orders, entered in the court below on August 28, 1947, dismissing protective appeals which Petitioner had taken in the names of Mr. Thompson, as Trustee, and the New Orleans from Order No. 2604-A and an appeal from an Order of the district court denying permission to appeal from order No. 2604-A in the name of Mr. Thompson, as Trustee. (R. IV, 31, 33, 34)

[2] *Wright* v. *Group of Institutional Investors*, 163 F. 2d 1022 (C.C.A. 8th, 1947).

Petitioner's Improper Use of Matter Outside the Record.

The Petitioner stated in his reply brief in support of his application for certiorari that he accepted the findings of the courts below. (p. 2) His statement on this subject was:

> "We assume the findings of the District Court. Our challenge is directed only to the legal import of these unchallenged facts."

In his brief on the merits Petitioner utterly ignores this statement. His main brief is devoted largely to argument of the facts. Again and again throughout the brief this Court is asked to go through the record and to find the facts in accordance with Petitioner's version.

Petitioner is not satisfied with the record upon which the findings are based. To support his conclusions as to the facts, he relies on a miscellaneous collection of documents not in the record, which include a Senate committee report, a transcript of hearings before a Senate subcommittee and a report of the Commission to Congress. If these extraneous documents are to be included, this Court will have before it what is in effect a new record which neither of the courts below considered in connection with the findings. Petitioner in reality is asking for a new trial in this Court upon a new record.

The documents *dehors* the record are cited on the mere pretext that this Court will take judicial notice of them. Whether or not this Court will take judicial notice of these documents is irrelevant. They are cited to establish the truth of the facts therein recited or to discredit one of the witnesses. Petitioner offered some of these documents at the hearing before the Commission on the 1944 Plan. The trial officer properly excluded them. (R. 160-161) Petitioner made no effort to have these documents admit-

ted in evidence at the trial although an unsuccessful attempt was made to use them for the purpose of impeaching a witness. (R. 962-968) Because of the obvious impropriety of citation to documents outside the record, we will ignore them.

It seems to us that the Petitioner has not fulfilled the statements made to this Court as to the nature of the issues to be presented on this review. This Court presumably granted the writ for the purpose of considering certain questions of law. Instead, Petitioner is asking for a new trial. For the reason stated in Point I of this brief, the Petitioner is not entitled to a new trial. Accordingly, the writ should be dismissed without examining the merits of the Petitioner's contentions.

The Facts.

The Petitioner's brief is largely predicated upon the theory that the facts of this case call for application of the principles of the *Deep Rock*[1] case. His statement of the facts is an effort to fit them into the mold of that decision. The result is a one-sided statement containing errors and omissions. As already noted, the findings are to a large extent ignored. Consequently, we find it necessary to restate the facts and to integrate our statement with the findings.

Petitioner charges that the Missouri Pacific management dominated and controlled the New Orleans, caused it to pay illegal and improper dividends, made improper loans to it, imposed unfair transactions upon it, and generally mismanaged it. In order to understand the matters of which Petitioner complains, it is necessary to examine the setting in which they occurred. An improvement program or any

[1] *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939).

other single feature of railroad operations cannot be considered separately in abstract. A dividend policy or the propriety of borrowing cannot be judged on the basis of the books of account alone as the Petitioner has tried to do in his brief. This is particularly true in considering issues of the kind presented by the record now under review. These issues involve an attempt to determine, after the lapse of many years, the motives and purposes of the men who constituted the Missouri Pacific management. Many of these men were dead at the time of the trial. In passing judgment on the Missouri Pacific management during the years 1925-1932, it is necessary to understand some of the basic facts relating to the railroad system they were operating and what they were trying to accomplish. One of the most important and far-reaching developments in the history of the Missouri Pacific System since 1917, and one which is a clear indication of the purposes of that management, was the adoption of the Baldwin Improvement Program.

The Baldwin Improvement Program 1923-1930.

The late Mr. L. W. Baldwin came to the Missouri Pacific as president in 1923. He saw that large sums of money would have to be spent to make it a first class railroad system, and it was decided by the management to put Mr. Baldwin in a position to make the Missouri Pacific such a railroad. The improvement and expansion program, inaugurated in 1923, came to an end in 1930. Over $200,000,000 was spent in carrying it out. The program included acquisition of the GCL, which controlled the I-GN, and a fifty per cent. interest in the Denver & Rio Grande Western. These were considered necessary for the strategic development of the system. The results of

this program were notable. At the beginning of the period Missouri Pacific's share of southwestern business was approximately 22%. At the close of this period this had increased to 27%, a shift which Mr. Wyer[1] described as revolutionary. (R. 880-882) Group Exhibit 25 (column 12) shows what was done in this period. (Ex. 269, R. 883-885) From 1917 to 1922 average annual expenditures for additions and betterments were $7,118,000. During the Baldwin Improvement Program they averaged $23,785,000 per annum. In 1931-1939 they averaged $5,988,000, and for the War period, 1940-1943, the average was $10,293,000. In the whole history of the Missouri Pacific since 1917 there is nothing at all comparable to the Baldwin Improvement Program. (R. 884; FF. 5, R. 10)

Acquisition of the GCL-1924.

In 1924 the Missouri Pacific purchased the controlling capital stock interest in the New Orleans. This purchase was financed in part by an issue of fifteen-year sinking fund notes of the Missouri Pacific. The unpaid portion of these 7% notes was refunded in 1926 by the sale of the Secured Serial Bonds in the principal amount of $13,156,000. (R. 630-631) These bonds were secured by the pledge of $1,000 par value of New Orleans capital stock for each $1,000 principal amount of outstanding bonds. (Ex. 146, 177; R. 611, 630; FF. 6, 7, R. 11)

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[1] Mr. William Wyer was called as an expert witness by the Group. He had been Secretary and Treasurer of the Missouri Pacific and the New Orleans. At the time Mr. Wyer testified he was Chief Executive Officer of the Central Railroad of New Jersey. Mr. Wyer is a member of a firm of railroad consultants who have been retained in a number of railroad reorganizations, including the Wabash, Alton, Chicago & Northwestern, Denver, Rio Grande & Western, Erie, New Haven, Seaboard, Central of Georgia, and the Florida East Coast. (R. 868-870)

Description of the GCL.

The fifteen companies in the GCL system operate approximately 1,736 miles of railroad, the principal lines of which extend from the lower Rio Grande Valley in Texas around the Gulf Coast to Anchorage and New Orleans, Louisiana. (Ex. 267, R. 870; Ex. 268, R. 873; FF. 8, R. 12)

The Missouri Pacific System map opposite this page[1] shows that the railroad of the GCL connects with the Missouri Pacific at Kinder, Louisiana. This connection provides the shortest route from points along the Gulf Coast Lines to St. Louis, Chicago and the east. *Control of Gulf Coast Lines by Missouri Pacific R. R.*, 94 ICC 191, 199 (1924). Another connection with the Missouri Pacific is made via the lines of the I-GN from Houston to Longview, Texas, and the lines of the Texas & Pacific, a Missouri Pacific subsidiary, from Longview to Texarkana. These afford a route to Kansas City, Omaha and points to the north and west.

The New Orleans itself operates only about 11% of the total GCL mileage. (R. 874; FF. 8, R. 13) It is primarily a holding company owning all of the stock and bonds of the other fourteen companies. (R. 874; FF. 3, R. 9-10) It is the only one of the GCL group which had any securities outstanding in the hands of the public.[2] The railroad of the Brownsville extending from Houston to Brownsville, Texas, is the most important of the group.

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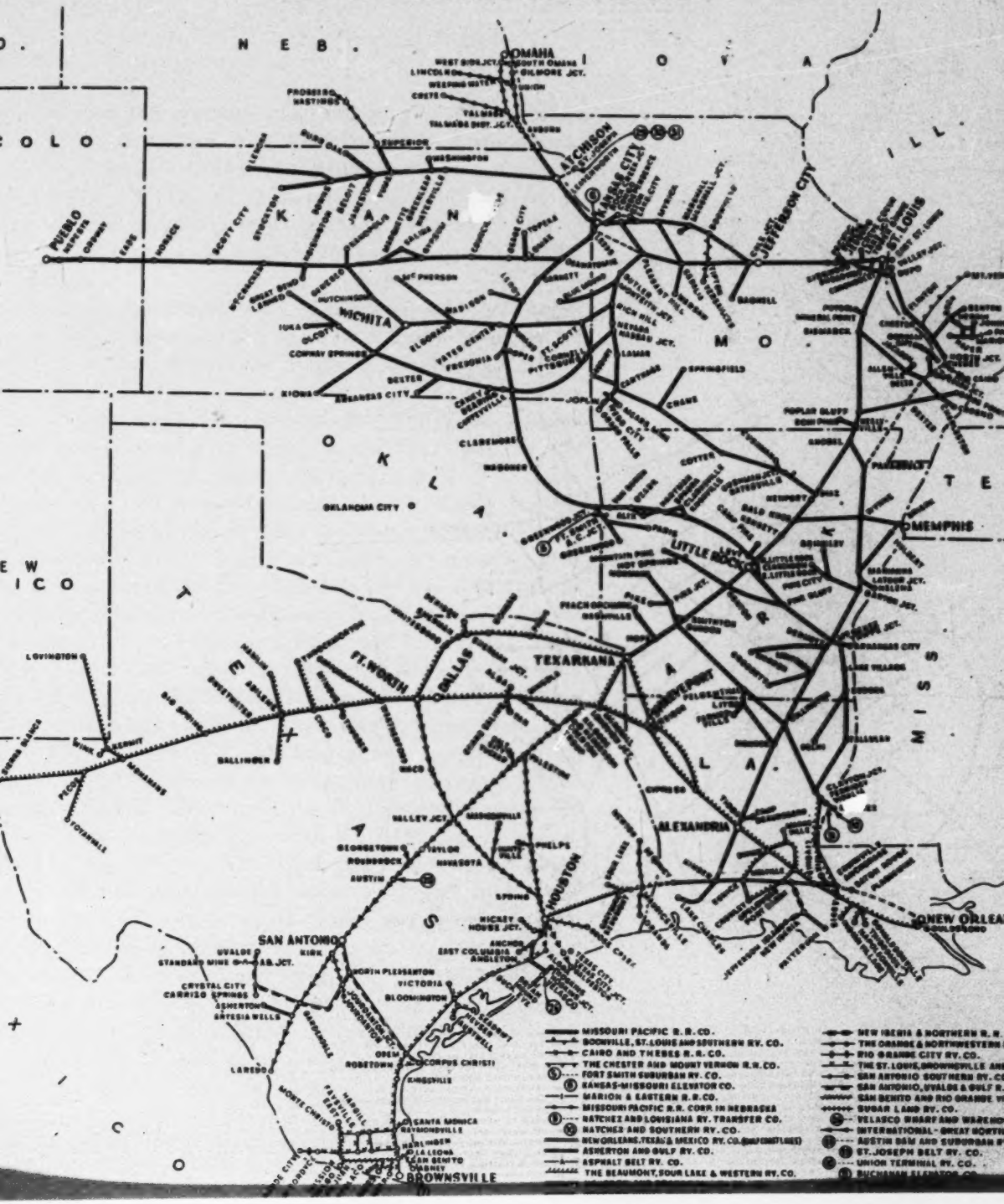
[1] This is a copy of Exhibit No. 7 admitted in evidence at the Commission hearing on the 1940 Plan. Group Exhibit No. 23 (Ex. 267, R. 870) is an enlarged reproduction of part of Exhibit No. 7 which, inadvertently, was referred to by Mr. Wyer as "Exhibit No. 1". (R. 870)

[2] During the period 1925-1932 the Brownsville had a small amount of equipment obligations outstanding in the hands of the public. Current indebtedness to general creditors of the GCL subsidiaries during this period was also small. (FF. 3, R. 9-10)

MAP OF MISSOURI PACIFIC SYSTEM



ption of the GCL.

The fifteen companies in the GCL system operate approximately 1,736 miles of railroad, the principal lines of which extend from the lower Rio Grande Valley in Texas and the Gulf Coast to Anchorage and New Orleans, Louisiana. (Ex. 267, R. 870; Ex. 268, R. 873; FF. 8, R. 12) The Missouri Pacific System map opposite this page[1] shows that the railroad of the GCL connects with the Missouri Pacific at Kinder, Louisiana. This connection provides the shortest route from points along the Gulf Coast Lines to St. Louis, Chicago and the east. *Control of Gulf Coast Lines by Missouri Pacific R. R.*, 94 ICC 199 (1924). Another connection with the Missouri Pacific is made via the lines of the I-GN from Houston to Longview, Texas, and the lines of the Texas & Pacific, a Missouri Pacific subsidiary, from Longview to Texarkana. These afford a route to Kansas City, Omaha and points to the north and west.

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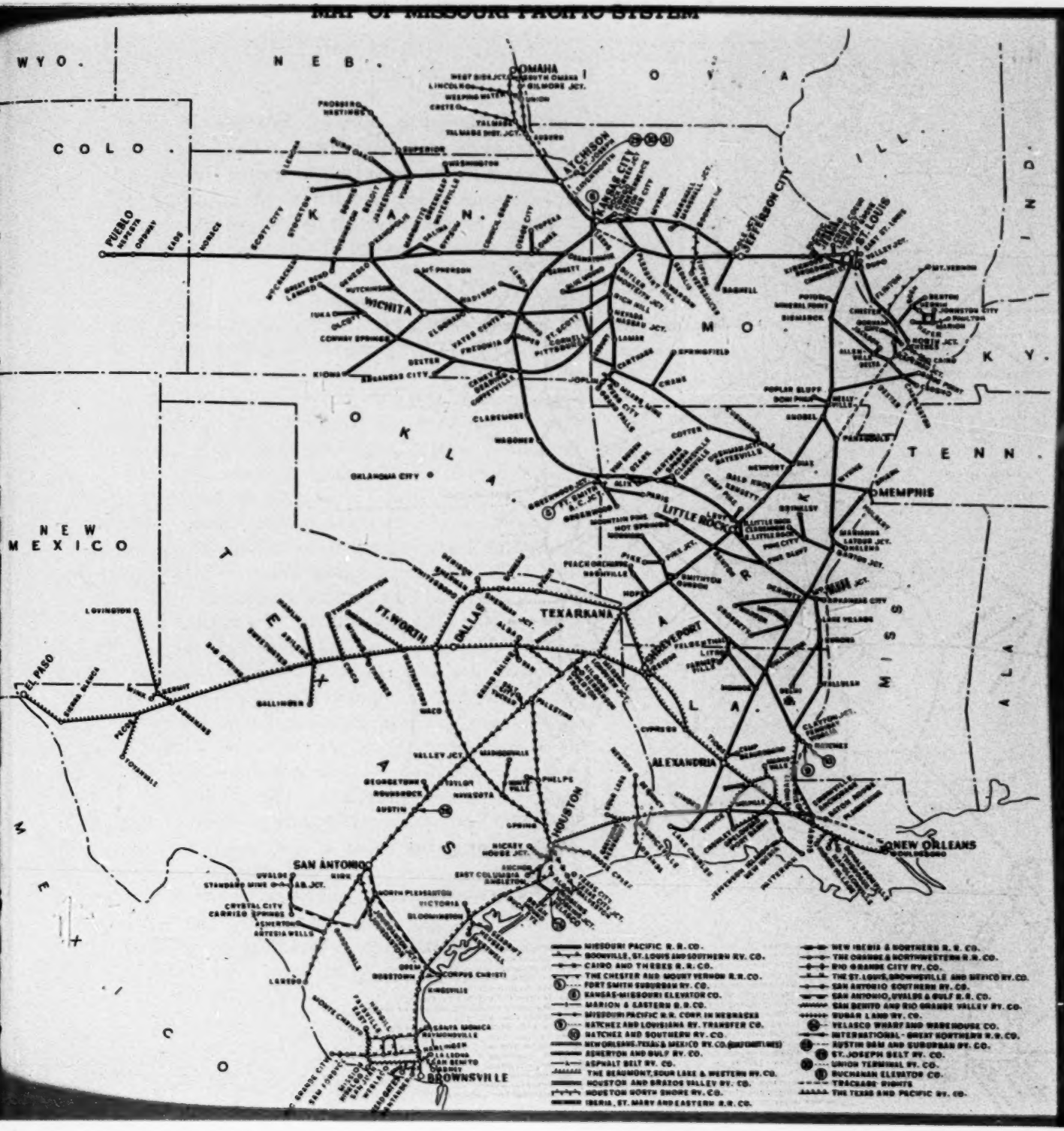
MAP OF MISSOURI PACIFIC SYSTEM
WYO.
NEB.
COLO.
KAN.
OKLA.
TEXAS
NEW MEXICO
IOWA
ILL.
IND.
MO.
KY.
TENN.
MISS.
LA.
ARK.
OMAHA
ATCHISON
KANSAS CITY
LEAVENWORTH
ST. JOSEPH
JEFFERSON CITY
ST. LOUIS
PUEBLO
WICHITA
OKLAHOMA CITY
LITTLE ROCK
MEMPHIS
TEXARKANA
FT. WORTH
DALLAS
SHREVEPORT
ALEXANDRIA
HOUSTON
NEW ORLEANS
SAN ANTONIO
BROWNSVILLE
EL PASO
MISSOURI PACIFIC R.R. CO.
BROWNSVILLE, ST. LOUIS AND SOUTHERN RY. CO.
CAIRO AND THEBES R.R. CO.
THE CHESTER AND MOUNT VERNON R.R. CO.
FORT SMITH SUBURBAN RY. CO.
KANSAS-MISSOURI ELEVATOR CO.
MARION & EASTERN R.R. CO.
MISSOURI PACIFIC R.R. CORP. IN NEBRASKA
NATCHEZ AND LOUISIANA RY. TRANSFER CO.
NATCHEZ AND SOUTHERN RY. CO.
NEW ORLEANS, TEXAS & MEXICO RY. CO. (INFORMATION)
ASHERTON AND GULF RY. CO.
ASPHALT BELT RY. CO.
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.
HOUSTON AND BRAZOS VALLEY RY. CO.
HOUSTON NORTH SHORE RY. CO.
IBERIA, ST. MARY AND EASTERN R.R. CO.
NEW IBERIA & NORTHERN R. R. CO.
THE ORANGE & NORTHWESTERN R.R. CO.
RIO GRANDE CITY RY. CO.
THE ST. LOUIS, BROWNSVILLE AND MEXICO RY. CO.
SAN ANTONIO SOUTHERN RY. CO.
SAN ANTONIO, UVALDE & GULF R.R. CO.
SAN BENITO AND RIO GRANDE VALLEY RY. CO.
SUGAR LAND RY. CO.
VELASCO WHARF AND WAREHOUSE CO.
INTERNATIONAL - GREAT NORTHERN R.R. CO.
AUSTIN DAM AND SUBURBAN RY. CO.
ST. JOSEPH BELT RY. CO.
UNION TERMINAL RY. CO.
BUCHANAN ELEVATOR CO.
TRACKAGE RIGHTS
THE TEXAS AND PACIFIC RY. CO.

The Brownsville operates one-third of the GCL mileage and, during the period with which we are concerned, contributed from 61% to 84% of the income of the group. (R. 927; FF. 8, R. 12) It is not surprising, therefore, to find that the greater part of the New Orleans income is derived from its investments in the securities of the GCL subsidiaries.

Seven of the fourteen GCL subsidiaries were not a part of the GCL system in 1924, these having been acquired by the New Orleans during the period 1925-1931. (Ex. 98, R. 488; FF. 3, R. 9-10) Although not urged in his petition for certiorari Petitioner charges that five of these seven GCL subsidiaries were acquired by the New Orleans for the benefit of the Missouri Pacific System. These five subsidiaries are referred to as "North Texas Feeder Lines", although none of them is located in north Texas, as the map opposite page 8 will show. It is stated that the acquisition of the five short lines by the New Orleans resulted in injury to it and benefit to the Missouri Pacific and the I-GN. (Petitioner's brief, pp. 18 and 19) It is also asserted that "some" of these short lines do not even connect with the Gulf Coast Lines. Two of them have no direct connection with the Gulf Coast Lines. One, the Asherton & Gulf, is a 32-mile branch line extending to the north of the I-GN route between Gardendale, Texas and the Mexican border. The other, the Sugar Land, owns a 19-mile branch line connecting with the I-GN near Houston, Texas. (Ex. 268, R. 873) Petitioner offered no proof at the trial to show in what directions traffic from these five short lines flows. Nor is there any proof showing the proportion of traffic originating on these short lines delivered to the Gulf Coast Lines. Nor is there any proof showing that the GCL traffic originating and terminating on these lines is profitable or unprofitable. Petitioner, instead, builds a whole structure of assumptions upon Mr.

Baldwin's statement that some of the short lines "tie in" with the I-GN. (R. 605-606) It might just as well be assumed, for example, that the Asherton & Gulf runs to a rock quarry which is a source of supply for GCL ballast.

The I-GN itself was a subsidiary of the New Orleans. This had been true since prior to the Missouri Pacific's acquisition of the New Orleans. It is immaterial that, from an operational standpoint, Mr. Baldwin looked upon the I-GN as a Missouri Pacific subsidiary. (R. 603-604)

The comments of the Commission, only partly quoted at pages 18 and 19 of Petitioner's brief, suggest no impropriety in the acquisition by the New Orleans of the short lines. (239 ICC at 71) As Mr. Wyer testified, branch lines frequently operate at a deficit. Their value is in the traffic contributed to the main line. (R. 873)

It was proposed by way of compromise in the plans discussed by the Commission that the deficits of the short lines be allocated over the system in accordance with the benefits derived from traffic obtained from the short lines. These and other adjustments formed the basis for allocation of new securities to the New Orleans security holders. After considering these matters, the Commission certified its 1940 Plan and thereafter its 1944 Plan. Thus, the 1944 Plan now under review has already given effect to any adjustments which need to be made. Nevertheless Petitioner seeks to obtain a further advantage, by way of subordination, on the basis of these same facts.

This matter of the short lines serves to emphasize the importance of what is said in Point VI of this brief. (p. 76, *infra*) Matters such as this were gone into in great detail at the first hearings before the Commission on the 1940 Plan. At that time it would have been appropriate for Petitioner to have raised his subordination issue. Matters such as these are within the field of the Commission's expert knowledge. Its findings would have been an essential prerequisite to a consideration of these

matters by the district court. Yet Petitioner asks this Court to try these issues upon the incomplete facts in the record.

The Petitioner was required by the order setting the date for the 77(e) hearing on the 1944 Plan and by the provisions of Section 77(e), to specify in detail his objections to the 1944 Plan.[1] No mention of the short lines is made in his objections and, aside from a few questions addressed to Mr. Baldwin at the district court hearing, the Petitioner gave no indication that he had any objection pertaining to acquisition of the five short lines. (R. 243-244, 605-606) These omissions are inexcusable. The transcript of the proceedings before the Commission on the 1940 Plan was available to Petitioner and so was the Commission's 1940 Report from which he quotes. Moreover, his witness Delaney spent a month in the St. Louis and Houston offices of the debtors going over their books. (R. 477, 495) The first statement of his objections concerning any of the short lines appeared in the Petitioner's district court brief after the record had been closed. The proponents of the plan were at least entitled to know the issues which they were required to meet. In this state of the record the district court was bound to find against the Petitioner. (FF. 3, 4, R. 9, 10)

Comparison of the GCL before and after Missouri Pacific Acquisition.

In making his charges of mismanagement and overreaching, Petitioner completely ignores facts which show

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[1] "§77(e). Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment."

a scrupulous regard for the separate rights of the New Orleans and its security holders. He also brushes aside the great improvement in physical condition and traffic which occurred in the GCL during the Missouri Pacific regime. In dealing with this aspect of the case, we will consider, first, physical condition, and, second, traffic, in each case making comparisons between the period when the GCL was under independent management and the period after the Missouri Pacific acquired control.

(1) *Physical Condition.*

At the time arrangements were made for acquisition of the controlling interest in the capital stock of the New Orleans in the spring of 1924, it was apparent that substantial improvements would be necessary in order to make the GCL a first class railroad system. These properties had emerged in 1920 from Federal control in an unsatisfactory condition. They had been undermaintained (R. 829-830) and the condition of track and roadbed was such that the high-speed trains, which were put into operation in later years for the handling of perishable traffic from the Valley, could not have been operated. (R. 831) There was much old and obsolete equipment. The exhibits of Messrs. Rodgers[1] and Kirkpatrick[1] give a fair indication of the condition of the GCL road and equipment at the time the Missouri Pacific acquired control of the New Orleans. (Ex. 249, 251-253, R. 815, 829; see also R. 814-815, 819-823, 828, 832, 834; FF. 9, R. 13)

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[1] Mr. D. Rucker Rodgers, of the Mechanical Department, was called as a witness by the Group. He had had approximately 42 years of railroad experience. (R. 814) Mr. C. S. Kirkpatrick, Chief Engineer of the GCL since 1916 and of the I-GN since 1925, was called as a witness by the Group. He had been engaged in railroad location, construction and maintenance work since 1900. (R. 827-828)

At the end of 1923 only 16.6% of GCL ties were creosoted. This compares with 87.7% at the end of 1931. (Ex. 251-253, R. 829) New rail laid in the period prior to 1924 averaged 3,594 tons per annum. This compares with an average of 5,760 tons per annum for the period after 1924. (Ex. 251-253, R. 829)

If a similar comparison is made of the equipment data for the two periods, the result is likewise favorable to the second period. (Ex. 249, R. 815) Locomotive failures averaged 21,000 miles per failure in the earlier period, 111,000 miles in the second period and 302,000 and 204,000 miles, respectively, in the last two years of the second period. (Ex. 249, R. 815) Testing the condition of locomotives on the basis of inspection by the Commission's inspectors, the second period likewise shows very great improvement. The data shown on Group Exhibit 16 (Ex. 249, R. 815) with respect to freight cars and passenger cars indicates that the condition of this equipment was substantially better in the second period than in the first. (R. 821, 822)

The effect of the Baldwin Improvement Program upon the GCL after its acquisition by the Missouri Pacific in 1924 is also notable. Group Exhibit 37 (Ex. 297, R. 910) shows what was done in the way of improvement on the GCL during the period of the Baldwin Improvement Program. It also furnishes a basis for comparison with the previous period beginning in 1916 when the GCL was under independent management. Of the $32,000,000 expended by the GCL for additions and betterments during the fifteen-year period 1916-1931, about $22,000,000, or nearly 70%, was expended during the six years 1925-1930. (R. 911) Mr. Kirkpatrick's exhibit (Ex. 255, R. 832) briefly describes the major additions and betterments to road and equipment during the period 1925-1932. The record convincingly demonstrates the very substantial improvement in the physical condition of the GCL which occurred after

the Missouri Pacific acquired a controlling interest in the New Orleans. (FF. 9, R. 13)

This improved physical condition had an important effect upon GCL traffic.

(2) *Traffic.*

Mr. J. A. Brown, the General Freight Agent and Freight Traffic Manager of the GCL from 1912 until 1927 and Chief Traffic Officer of the Missouri Pacific at the time of his retirement in June 1944, was called as a witness by the Group. (R. 840-841) He described some of the difficulties which the GCL encountered in dealing with other carriers prior to 1924. (R. 844-848) The lower Rio Grande Valley is an important citrus and vegetable producing region. (R. 842-843) Beginning in 1912 the GCL made various arrangements with connecting carriers for the handling of the perishable traffic beyond its lines. (R. 843-848) Prior to 1921 none of these arrangements was satisfactory. Either the division allowed to the GCL was too low or there was an inability to obtain the necessary supply of refrigerator cars to handle the perishable traffic. (R. 843-848) The above cited portions of the record clearly demonstrate that prior to 1924 the GCL was not in a strong position to bargain with other carriers. (FF. 10, R. 13-14)

For a number of years Mr. Brown had endeavored to make arrangements with the Illinois Central for the handling of the perishable traffic northward from Baton Rouge. In 1921 such an arrangement was consummated. It was considered by the independent management of the GCL as entirely satisfactory. (R. 848) It should be noted here that the running time for trains handling the perishable traffic between the Valley and St. Louis was 102 hours in 1924. (R. 850) The Baton Rouge route involved ferrying the trains across the Mississippi at Anchorage,

Louisiana. The average train required three river crossings which consumed six hours. (R. 850-851) After this traffic began to move via Kinder and the Missouri Pacific, these schedules were reduced as follows:

January 1, 1925....97 hours
October 21, 1927....72 hours
October 30, 1929....64½ hours
October 22, 1932....61½ hours (FF. 10, R. 14; R. 858).

In 1927 the Southern Pacific extended its line to the lower Rio Grande Valley and obtained initially about 20% of the perishable traffic moving out of the Valley by railroad. The GCL was able to hold the Southern Pacific to this ratio thereafter. Mr. Brown stated that without the aid of the Missouri Pacific the GCL could not have maintained its position against this competition. (R. 861-862; FF. 11, R. 15)

After 1927 a considerable amount of the perishable traffic began to move to Kansas City and beyond. The Southern Pacific and its connections have a shorter route to Kansas City than the Missouri Pacific System lines. The Missouri Pacific and its affiliate, the Texas & Pacific, together with the New Orleans and its subsidiary, the I-GN, established schedules from Houston to Kansas City which enabled the GCL to hold its position with respect to this traffic. Mr. Brown stated that this could not have been done without the aid of the Missouri Pacific. (R. 851-853; FF. 12, R. 15)

As noted, after acquisition of the GCL by the Missouri Pacific the perishable traffic moving to St. Louis and the east was delivered to the Missouri Pacific at Kinder. Mr. Brown testified as to the manner in which the divisions of the revenue from this traffic were made up. (R. 851-853)

The vegetable traffic will serve as an example. When this traffic moved via Baton Rouge the GCL received about 74% of the revenue. After it started moving through Kinder, Mr. Baldwin requested Mr. Perkins of the Missouri Pacific and Mr. Brown of the GCL to work out new divisions. He instructed them to make sure that the arrangements would be "liberal in favor of the GCL". (R. 853-855; FF. 13, R. 15) The negotiations between Mr. Brown and Mr. Perkins resulted in a division that gave to the GCL an advantage of about $5 per car over the arrangement which had theretofore existed between the GCL and the Illinois Central. (R. 854-855; FF. 13, R. 15) A few years later the advantage to the GCL in using the Kinder route as compared with the Baton Rouge route was even more marked as the result of the decision of the Commission in the *Southwestern Rate Divisions* case. After that decision, the advantage to the GCL on citrus amounted to $32 per car and on vegetables $27.82 per car. (R. 855-856; FF. 13, R. 16)

Another instance of the benefit to the GCL of its relationship with the Missouri Pacific is the arrangement which the GCL made with the American Refrigerator Transit Company for the supply of refrigerator cars. This Company is owned by the Missouri Pacific and the Wabash. In the handling of the perishable business it was important that the GCL have an adequate supply of refrigerator cars. The perishable traffic is seasonal, beginning in September and continuing through the spring months. (R. 844-845) It would have been too costly and quite impracticable for the GCL to have maintained its own supply of refrigerator cars. During the period prior to 1924 the GCL experienced serious refrigerator car shortages. (R. 844-845, 847-848) After 1924 no such difficulties were experienced. (R. 861) Thus, the GCL was greatly benefited and substantial sav-

ings were effected by having an adequate supply of refrigerator cars available to meet this seasonal demand. In addition to this, the American Refrigerator Transit Company made a special arrangement with the GCL whereby the refrigeration charge to the shipper accrued to the GCL, the latter being obligated to pay the actual costs of icing the refrigerator cars. This resulted in a profit to the GCL during the period 1924-1932 of $6,171,876. (R. 860; FF. 14, R. 16)

Thus far we have dealt with the perishable traffic moving out of the Valley. Group Exhibits 21 and 22 (Ex. 265, 266, R. 856, 861) deal with GCL traffic generally. The first of these exhibits compares the interchange at Kinder with the interchange at Baton Rouge for the years 1922-1931. It will be noted that, although Missouri Pacific deliveries to the GCL at Kinder increased substantially in the 1925-1931 period, the GCL continued to receive from the Illinois Central at Baton Rouge the greater portion of the traffic which it had theretofore received. This indicates that the diversion of the perishable traffic to the Missouri Pacific at Kinder did not have any serious results on the traffic received from the Illinois Central at Baton Rouge. The net effect was greatly to the advantage of the GCL. Group Exhibit 22 (Ex. 266, R. 861) compares for the years 1922-1931 total carloadings for all United States Class I railroads with total carloads received by the GCL from (1) all roads, (2) the Missouri Pacific and the I-GN, and (3) all roads other than the Missouri Pacific and the I-GN. It is significant that in every one of the years after 1924 the GCL was in a relatively better position from a traffic standpoint than the railroads of the United States generally. It should also be noted that, although the GCL received somewhat less traffic from non-System lines after 1924, this was more than made up by the receipts from

the Missouri Pacific and the I-GN. Group Exhibits 21 and 22 (Ex. 265, 266, R. 856, 861) demonstrate that from a traffic standpoint the GCL's relationship with the Missouri Pacific was of great benefit to the GCL. (FF. 15, R. 16)

We have dealt with some of the direct traffic benefits which the GCL derived from its relationship with the Missouri Pacific. There were also indirect benefits which are difficult to measure in dollars and cents. The Missouri Pacific widely advertised the products of the Rio Grande Valley. In addition to newspaper and magazine advertising, a special car was sent throughout the United States for the purpose of exhibiting the products of the Valley. (R. 859) The Missouri Pacific also maintained experimental farms in the Valley for the purpose of aiding the growers in improving the quantity and quality of their products. (R. 858) The purpose of these activities was, of course, to secure additional traffic for the System. (FF. 16, R. 17)

These improvements in roadbed, equipment and service were not only of benefit to security holders but also to the communities which the GCL served. As an example, the products of the lower Rio Grande Valley are in competition with perishable products from other sections of the United States. This competition was importantly affected by the length of time required for the movement of the perishables from the Valley to market. It seems obvious that the competitive position of the Valley producers was greatly improved as a result of the steps taken by the Missouri Pacific management to shorten train schedules and to see that an adequate supply of refrigerator cars was maintained. Thus did the Missouri Pacific contribute to the building up of the Gulf Coast territory and the creation of greater traffic for the GCL.

These are considerations which must be taken into account in passing judgment on the Missouri Pacific management. What we have shown is entirely inconsistent with the Petitioner's charges of mismanagement and overreaching. If there had been any disposition on the part of the Missouri Pacific management to take advantage of the GCL, they could have accomplished it most easily in their dealings with the GCL in respect of maintenance and traffic matters. It would have been quite simple to continue maintenance at substantially the levels which prevailed prior to the acquisition of the GCL. Also, in the matter of divisions the Missouri Pacific management could have taken advantage of the GCL if they had had the motives attributed to them in the Petitioner's brief. By such means the Missouri Pacific could have improved its earnings quite as effectively as by the declaration of the New Orleans dividends. Instead we find that the Missouri Pacific management leaned over backward in their dealings with the GCL.

Method of Financing Improvements.

As already noted, the Missouri Pacific spent over $200,000,000 on the Baldwin Improvement Program. (p. 6, *supra*) Such a program had to be financed. From 1917 to 1928 the Missouri Pacific put back into its improvement program approximately $49,000,000 available for dividends. (R. 887)

The remainder of the improvement program had to be financed through borrowing. It was not feasible to issue a few bonds each time that more funds were needed. Instead short term borrowings to finance the improvement program were allowed to accumulate to a point where they could be refunded by a bond issue large enough to be saleable. (R. 887) Group Exhibits 26, 27 and 28 illustrate the policy

which was followed on the Missouri Pacific. (Ex. 271, 273, 275, R. 888; R. 887-890; FF. 17, R. 17)

The same pattern was followed by the GCL. Group Exhibit 29 shows a typical GCL financing cycle which ended in February 1928. (Ex. 277, R. 890) During that cycle $6,683,739 was spent by the GCL for additions and betterments. From time to time, as funds were needed for additions and betterments, the GCL obtained them by means of short term borrowings. After the short term borrowings had accumulated to approximately $4,500,000, an issue of first mortgage bonds was sold to underwriters and the short term loans were refunded. (R. 887, 893-896; Ex. 277, R. 890) The new cycle which began in 1928 was interrupted by the depression. The advances which the Missouri Pacific had made to the New Orleans in this new cycle could not be refunded due to the fact that market conditions in 1931 rendered it impossible to sell long term obligations. (R. 896, 1022-1026; FF. 17, R. 17)

Advances by the Missouri Pacific to the GCL.

Following the refunding of the short term borrowings in 1928, the Missouri Pacific continued to make advances to the New Orleans. The net principal sum of these advances as of the date of bankruptcy amounted to $10,565,227. (Ex. 239, R. 791) These advances fall into two categories, (1) those made during the period when dividends were being paid on the capital stock of the New Orleans, and (2) those made after that time and prior to bankruptcy. (R. 900-901; FF. 18, R. 18) The last dividend was declared on October 13, 1931. (Ex. 173, R. 617)

Petitioner asserts that approximately $2,795,000 of the intercompany claim is made up of advances for dividends.

(Petitioner's Brief, p. 10, 11) This assertion, upon any theory of the facts, is incorrect.[1] Petitioner ignores the basic considerations which controlled the making of the advances. Mr. Wyer, who participated in the proceedings of the directors throughout almost the entire period of the new financing cycle which began in 1928 (R. 892, 893, 896, 918), gave a very clear statement of the basic policy which was followed by the Missouri Pacific in making the advances. (R. 887-910) He testified that until near the end of 1931 the advances were geared to the GCL capital expenditures. The Missouri Pacific directors were kept advised in detail as to the progress of additions and betterments, and Mr. Wyer left no doubt that the basic purpose of the advances was to enable the GCL to proceed with its improvement program. (Ex. 281, 297, R. 900, 910)

There is another consideration bearing on the purposes and propriety of these advances. The Missouri Pacific and the GCL were railroad corporations subject to the jurisdiction of the Interstate Commerce Commission. In December 1932, the Missouri Pacific applied to the Commission for authority to borrow from the RFC and to pledge to the RFC, among other collateral, $9,955,226.78 of the intercompany claim and advances of $2,486,000 made by the Mis-

[1] The total of $2,795,000 at the foot of column 1 in the table on page 10 of the Petitioner's brief erroneously includes (1) advances of $300,000 and $250,000 made on November 30, 1928 and February 28, 1929, which were repaid on June 4, 1930, December 28, 1931 and February 27, 1932 (Ex. 239, R. 791) and (2) the full amount of six advances which were in excess of the so-called "matching" quarterly dividends of $259,576 each. (Ex. 301, R. 914) If these errors be corrected, the aggregate of all of the advances contained in the intercompany claim which could have been used for "matching" dividends is $2,082,456. Furthermore, this computation takes no account of the fact that the Missouri Pacific received only a part of these dividends.

souri Pacific to the I-GN. (R. 119) With respect to this collateral the Commission made the following finding:

> "The advances aggregating approximately $12,441,000, upon which interest is being currently paid at the rate of 6% per annum, represent open account indebtedness to the applicant by two of its controlled companies accumulated over a period of five years. All of these advances were used to pay for additions and betterments to the properties, except that during the last two years certain of the advances to the New Orleans, Texas & Mexico Railway Company were made to overcome operating deficits. In the case of both of the controlled companies the obligations to repay the advances lie between their first mortgage bonds and their capital stock. In the case of the International-Great Northern Railroad Company they are senior as to the payment of interest on $17,000,000 of adjustment mortgage bonds, but junior to that bond issue as to security." (R. 117).

The Commission authorized a further loan from the RFC to the Missouri Pacific and the pledge of collateral to secure the RFC loans which included $9,955,226.78 of the intercompany claim.

Section 20a(2) of the Interstate Commerce Act (49 USCA, §20(2)) provides:

> "It shall be unlawful for any carrier to issue * * * any * * * evidence of * * * indebtedness of the carrier * * *, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the commission of the purposes and uses of the proposed issue and proceeds thereof, * * *, the commission by order authorizes such issue * * *. The commission shall make such order only if it finds that such issue * * *: (a) is for some lawful object within its corporate purposes, and

> compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose."

Subsection (9) of Section 20a excepts from the provisions of subsection (2) notes of a carrier maturing not more than two years after the date thereof and aggregating not more than 5% of the par value of the securities of the carrier then outstanding.

In February 1933, the New Orleans applied to the Commission under Section 20a for authority to issue $7,456,726.78 face amount of its notes to the Missouri Pacific. (R. 86) In its application the New Orleans showed that it was indebted to the Missouri Pacific for advances in the sum of $10,355,226.78, of which $400,000 was then represented by a promissory note, and that it had been requested by the Missouri Pacific to issue demand notes in the amount of $9,955,226.78 as evidence of the then remaining balance of indebtedness for advances. The application further recited that in partial compliance with that request the New Orleans had issued a demand note in the sum of $2,498,500, which together with the $400,000 note, exhausted its power to issue short term obligations under Section 20a(9) of the Transportation Act. The applicant sought authority to issue to the Missouri Pacific a promissory note bearing interest at the rate of 5½% per annum for the remainder of this indebtedness ($7,456,726.78). In complying with its statutory obligation, the Commission found:

> "* * * that the issue by the New Orleans, Texas & Mexico Railway Company of a note or notes in an aggregate amount not exceeding $7,456,726.78, as aforesaid, (a) is for a lawful object within its corporate purposes, and compatible with the public inter-

> est, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose." *New Orleans, Texas & Mexico Railway Company Notes,* Finance Docket No. 9817; 189 ICC 600, 601 (1933) (R. 86, 20839-20840).

Petitioner's contention of borrowing to pay dividends is based entirely upon the near coincidence as to the dates of certain dividends and advances. This is quite superficial and ignores basic principles of accounting. It is not customary for any corporation, railroad or otherwise, to keep two separate cash accounts, one in which income is deposited and the other in which capital items are kept. Instead, cash income and proceeds of borrowing are mingled in a single cash account. This cash is drawn upon from time to time to meet cash requirements whether chargeable to capital or otherwise. However, the auditor, in applying the accounting rules to these receipts and disbursements, will treat separately the capital and income items. To illustrate, let it be assumed that the New Orleans receives $200,000 in cash on January 31st and that the cash represents net earnings. At the time of receipt of this cash the New Orleans needs $200,000 to pay a bill for a capital item such as a new freight yard. The officers know that on the succeeding April 1st they will need $100,000 in cash to pay a dividend. Instead of borrowing to pay for the new freight yard, the officers use the $200,000 of cash income to pay for it. Then, three days prior to the dividend date the officers borrow $100,000 to reimburse the treasury in part for the investment in the new freight yard. In handling the matter in this way the officers save the New Orleans about two months' interest on $100,000 of the money spent for the new freight yard. (R. 901-903)

The court below found that until near the end of 1931 the immediate purpose of the advances in question was to reimburse the New Orleans treasury for expenditures for additions and betterments and that the basic and underlying purpose of the advances during that period was to enable the GCL to make additions and betterments to its properties. (FF. 18, R. 18) These findings are amply supported by the evidence reviewed in the foregoing discussion of the advances. (Ex. 281, 297, R. 900, 910)

The advances made in the latter part of 1931 and thereafter were to cover operating expenses and interest and sinking fund requirements of the New Orleans first mortgage and equipment trust obligations. The net advances made during this period amounted to $3,148,683. Clearly these advances were of benefit to the Secured Serial bondholders. (FF. 18, R. 18, 19)

Petitioner's charges of mismanagement are based in part on the inclusion in the intercompany claim of an item of $1,261,009.84. (Petitioner's brief, pp. 16-18, 34-37) This item originally represented indebtedness due from the New Orleans and its subsidiaries to the I-GN, also a subsidiary of the New Orleans. With the exception of $211,218.90 of "interest on unpaid bills" owing by the GCL to the I-GN, the sum of $1,261,009.84 represented an advance of cash items such as fuel and supplies by the I-GN. (Ex. 221-225, R. 701, 697-705; R. 793-797, 1041, 1048) At the same time the I-GN was indebted to the Missouri Pacific in an amount in excess of $1,261,009.84. There was no sound reason why the I-GN should be carrying the New Orleans and its subsidiaries. (R. 797) The result of the transaction complained of was that the New Orleans became obligated to the Missouri Pacific in the sum of $1,261,009.84 and the Missouri Pacific cancelled a like amount of indebtedness owing by the I-GN to it. At the same time the obligations

of the New Orleans and its subsidiaries to the I-GN were cancelled. The transaction is evidenced by appropriate ledger entries on the books of each of the Companies affected.[1] (Ex. 221-225, R. 701 as corrected at R. 793-797; Ex. 240, R. 794; R. 1043, 1048-1049) It is asserted that this transaction "saddled" the New Orleans with uncollectible claims of the I-GN. The purported basis for this assertion is a reference to Mr. Eckert's testimony to the effect that the GCL could not pay the I-GN. (Petitioner's brief, p. 17) It is clear from his testimony on redirect that he had no intention of suggesting that the obligors were insolvent and could not ultimately pay their debts to the I-GN. (R. 1048-1049; see also R. 797, 1043; Ex. 240, R. 794) There is no basis in the record for the assertions in Petitioner's brief that the obligations of the GCL subsidiaries were uncollectible in whole or in any substantial part. This subject is dealt with at pages 28-30, *infra*. In any event the New Orleans had to protect its ownership and control of the GCL subsidiaries. The properties of the GCL subsidiaries constituted 89% of the GCL mileage. These bills for fuel and supplies were of direct benefit to the New Orleans and it could not have permitted them to remain unpaid.

The Petitioner has entirely overlooked the fiduciary obligation of the New Orleans to its subsidiary, the I-GN. If in fact some of these items owing to the I-GN were "uncollectible", it would have been a violation of New Orleans' fiduciary obligation to have "saddled" them on its subsidiary, the I-GN. Thus, if we assume Petitioner's

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[1] Petitioner, at page 34 of his brief, asserts that this transaction required approval of the boards of directors of the New Orleans and the I-GN. This point was not raised in the district court. For that reason and for the further reason that the cases cited on page 35 of his brief do not hold that board action was necessary, no further consideration will be given to the point.

version of the facts, he is complaining of a transaction which relieved the I-GN of a saddling operation.

In any event the transaction had not the slightest effect upon the GCL system. It owed $1,261,009.84 prior to the transaction and not a penny more thereafter. Clearly the holders and pledgees of the New Orleans capital stock were not prejudiced in the slightest by the transaction.[1] (FF. 28, R. 22)

Dividends Declared and Paid on the Capital Stock of the New Orleans.

Despite the findings of two courts to the contrary, Petitioner asserts that the New Orleans paid dividends out of capital. (FF. 31, R. 23-24, R. IV, 26) In considering this matter, which is largely factual, it is necessary to have an understanding of the method by which the accounts of the GCL subsidiaries of the New Orleans were handled.

(1) *Indebtedness of the GCL Subsidiaries to the New Orleans.*

Petitioner asserts that the income account of the New Orleans was improperly stated. His reasons for this assertion are that no reserve was established for past due obligations owing by the GCL subsidiaries to the New Orleans, and that some or all of the Brownsville dividends constituted mere "paper income". (Petitioner's brief, pp. 33-34, 13-14)

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[1] Petitioner's Objection 19 fails to mention the "saddling" transaction, although he was required by Section 77(e) to specify his objections in detail. (R. 232, 237, 247) The only suggestion of an objection at the trial was the emphasis put upon the fact that no cash changed hands. (R. 706, 792-795, 1041-1043, 1048) As noted in connection with the short lines matter (p. 11), *supra*), the proponents of the 1944 Plan were entitled to know the case they had to meet.

The past due indebtedness of various subsidiaries to the New Orleans largely consisted of advances made to these subsidiaries, interest on indebtedness and items which the witnesses referred to at the hearing as "family line bills". (R. 505-507) The family line bills were items owing by the GCL subsidiaries to the New Orleans for joint expenses, per diem, fuel, materials, supplies, etc. It is pointed out that this indebtedness to the New Orleans increased substantially over the period 1925-1932. (Petitioner's brief, footnote, p. 34) It is asserted that this indebtedness was not worth its face value for the reason that a large part of it was past due.

Mr. Wyer explained these items and the reason why they continued to accumulate. (R. 918-923) The New Orleans, although it operated only 11% of the GCL mileage, was banker for the entire GCL system. As noted at page 8, *supra*, it was the only one of the GCL companies which had any securities outstanding in the hands of the public. In carrying out the extensive improvement program which was in effect throughout the period 1925-1930, the GCL subsidiaries were not in a position to finance their own improvements except out of earnings and by borrowing from the New Orleans. The New Orleans could have made additional investments in the capital stock of its subsidiaries in order to finance these additions and betterments. Instead, however, the New Orleans continued the system which was in effect when the Missouri Pacific acquired control of the GCL. Earnings of the subsidiaries of the New Orleans were insufficient to meet their obligations for operating expenses, dividends and the cost of the heavy improvement program, with the result that some of these items had to be deferred. Group Exhibit 40 shows that the expenditures for additions and betterments on the GCL during the period 1925-1930 were running from 10.8% to as high as 31.8% of total operat-

ing revenues. (Ex. 301, R. 914-915) A large part of the freight revenues of these subsidiaries was cleared through the New Orleans and, as these items were received by the New Orleans, they were credited against family line bills and other obligations owing by the subsidiaries. However, since the total requirements of the subsidiaries for operating expenses, etc. and for the improvements was in excess of these receipts, some bills had to go unpaid. No matter what particular items remained unpaid, the existence of the unpaid items was fundamentally caused by the improvement program. Thus, the accumulating indebtedness of the GCL subsidiaries in large part represented advances by the New Orleans to its subsidiaries for improvements. Group Exhibits 43 and 44 support this conclusion. (Ex. 305, 307, R. 923, 926) These exhibits are an analysis of the balance sheets of the Brownsville and the Beaumont for the period 1924-1931. The last four lines of these exhibits compare increase in net investments with increase in debt for the period. It will be noted that funded debt remained substantially unchanged during this period, the increase in debt being represented largely by family line bills. As of December 31, 1930, the end of the improvement program, the net increase in investments of the Brownsville was substantially in excess of the cumulative increase in debt. (Ex. 305, R. 923) As of the same date, the increase in debt of the Beaumont was running somewhat ahead of its increase in investment. However, this cannot be attributed to dividends. The Beaumont paid no dividends after the Missouri Pacific acquired control of the GCL. Although the court below and Mr. Thompson gave the Petitioner every opportunity to obtain the information he wanted from the trustee's officers,[1] he put in

[1] The quotation from Mr. Delaney's testimony at page 60 of Petitioner's brief contradicts that witness' previous testimony and the statements of Petitioner's counsel. (R. 495, 433, 472, 527)

evidence only the balance sheets of the Beaumont and the Brownsville. (FF. 44, R. 29) In the absence of the facts which these balance sheets would show, he seeks to prove his case by drawing inferences which are quite inconsistent with the facts reviewed above.

It is plain from the foregoing that until the latter part of 1931 the increase in indebtedness of the GCL subsidiaries to the New Orleans represented an additional investment of the New Orleans in its subsidiaries which was devoted to improvements. Thus, there is no substantial basis for the statement that the age of various items of this indebtedness is an indication that they were not worth their face value. Whatever merit there might be in aging bills due from outsiders, it has no valid application to bills from wholly owned subsidiaries whose condition is fully known to the parent creditor and whose assets could at any time be called upon for payment of the debt.

The fact that the New Orleans acted as banker for its subsidiaries also explains the so-called "paper dividends" of the Brownsville about which Petitioner complains. As already noted, the New Orleans collected a large part of the freight revenues of its subsidiaries. Thus, when the Brownsville declared a dividend, payment was often effected by setting-off the dividend against freight revenues owing to the Brownsville. There can be no doubt that such a set-off accomplished legal payment of the Brownsville dividend.

(2) *1931 Brownsville Dividends.*

On June 17, 1931 the Brownsville declared two dividends aggregating $655,079, vouchers for which went into the family line accounts and were not paid. (Ex. 311, R. 928) On July 11th of the same year another dividend of $3,500,000 was declared by the Brownsville, of which

$1,400,000 was not paid. (Ex. 311, R. 928) The remaining $2,100,000 of the July 11, 1931 dividend was paid in installments over a period of one year and five months following the declaration. (Ex. 311, R. 928) Even if the unpaid $2,055,079 of dividends declared by the Brownsville in 1931 be eliminated, the balance in the earned surplus of the New Orleans at the end of 1931 would still be approximately $300,000 after payment of all dividends declared by the New Orleans. (Ex. 71, R. 432) The court below found that none of the New Orleans dividends were paid out of capital. (FF. 31, R. 23) It is significant that the letter from the Commission's Bureau of Accounts with respect to this matter required the New Orleans to write off only $1,400,000 of the $4,155,079 of dividends declared by the Brownsville in 1931. (Ex. 62, 63, R. 420, 421; R. 928-929, 1034-1035)

(3) *Transactions within the GCL are without Significance.*

Petitioner took up much of the trial in delving into various and sundry transactions between the New Orleans and the GCL subsidiaries. Although two courts have rejected his contentions, Petitioner still insists upon dragging these controversial factual matters into the case. We contend that the transactions within the GCL are without significance. As noted at page 30, *supra*, the New Orleans was the only company in the GCL group which had securities or indebtedness outstanding in the hands of the public. Thus, from the standpoint of a stockholder of the New Orleans, the posture which Petitioner assumes, it is without any consequence whether the assets of the New Orleans consist of family line bills, advances, past due indebtedness or any other obligation owing by its subsidiaries or by shares of stock of the subsidiaries. Nor is it

of any consequence to a New Orleans stockholder whether the dividends declared by the GCL subsidiaries in favor of the New Orleans were advisable or inadvisable. The passing of a dividend[1] or any other payment from one of the GCL subsidiaries to the New Orleans did not change the value of the New Orleans capital stock by one penny. As long as these subsidiary companies were efficiently operated, of which the record affords abundant evidence, a common stockholder of the New Orleans would not be affected by any kind of financial transaction within the group. If Petitioner were a creditor of one of these subsidiaries, the intercompany transactions might be of some importance. As a stockholder of the New Orleans, they are of no concern to him. It is for this reason that we contend that there is no significance whatever to the vast amount of irrelevant matter which Petitioner has injected into these proceedings pertaining to transactions between the New Orleans and its subsidiaries.

(4) *The Consolidated figures.*

For the same reason we contend that the only true picture of the New Orleans and its subsidiaries is given by the consolidated balance sheets (R. 81) and the consolidated income statements. (Ex. 299, R. 912) These consolidated figures eliminate all of the intercompany items and show the actual assets and earnings. Consolidated figures were chiefly used by the Commission in its reports approving the plans of reorganization. Mr. Wyer testified that the board of directors of the New Orleans, recognizing the significance of the consolidated figures, was concerned primarily with them. (R. 912) The board left it to the lawyers and the auditing department to see that dividends from the sub-

[1] During the period 1925-1931 the Brownsville was the only GCL subsidiary of the New Orleans which paid any dividends on its capital stock. (Ex. 199, R. 666)

sidiaries and other intercompany transactions conformed with the requirements of law.[1]

The consolidated income account of the GCL shows that the earnings were ample to cover the dividends declared by the New Orleans. (Ex. 299-301, R. 912, 913, 914) Net income available for dividends from March 1, 1916 to December 31, 1931 amounted to $15,986,390. The dividends declared during this period, including the extraordinary 1924 dividend, amounted to $13,646,191. There is no support for the statement that dividends were paid by the New Orleans out of capital. (FF. 31, R. 23; CL. 14, R. 33)

This leaves for discussion only the question of the propriety of maintaining regular dividends throughout the period 1925-1931. That subject will be dealt with in Point III of the argument.

It seems to us that an impartial examination of the facts of this case will demonstrate beyond any doubt that at the end of 1931 the GCL was a vastly better railroad than it was in 1924 when the Missouri Pacific acquired control, that its service to the public had been greatly improved during the Missouri Pacific regime, and that, in its dealings with the New Orleans, the Missouri Pacific showed a scrupulous regard for the obligations which it had assumed as a majority stockholder of the New Orleans.

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[1] Mr. Frank Andrews, of Houston, Texas, was general solicitor and Mr. Carl de Gersdorff, of New York, was general counsel for the New Orleans during the greater part of the period in question. (Ex. 6-34, R. 403-406, 912, 535)

POINT I

The findings of fact of the District Court will be accepted by this Court unless clear error is shown.

Following a full hearing on the factual issues, the district court made findings. These findings, concurred in by the court below, will be accepted by this Court without re-examination of the evidence, in accordance with the "two-court" rule. *Page* v. *Arkansas Gas Corp.*, 286 U.S. 269, 271 (1932); *Williams Co.* v. *United Shoe Machinery Corp.*, 316 U.S. 364, 367 (1942).

This rule is particularly appropriate in a case such as this. Judge Moore, who presided at the trial in the district court, has supervised the administration of the estates in bankruptcy of the Missouri Pacific, the GCL and their affiliates for a number of years. Over this long period he has acquired an intimate knowledge of the affairs of these debtors, the manner in which their properties were operated and their finances handled. He has also supervised administration of the Frisco and Cotton Belt estates. The knowledge of railroad operating, financing and accounting matters which he has gained in this wide experience specially qualified him to try the issues here involved.

POINT II

The District Court properly held that the pledgees' lien of the RFC and the RCC upon $9,955,226.78 principal sum of the intercompany claim was valid as against any equities in favor of holders and pledgees of the capital stock of the New Orleans. The First and Refunding Bondholders and other lien creditors of the Missouri Pacific have been subrogated to the extent of their interests, respectively, to said pledgees' lien.

We have noted that the Commission authorized the Missouri Pacific to pledge with the RFC, among other col-

lateral, $9,955,226.78 principal sum of the intercompany claim. (p. 22, *supra*) Until sometime after May 29, 1946 the RFC held this collateral to secure loans made to the Missouri Pacific in 1932 and 1933 in the principal sum of $23,134,800. (R. 1129-1137) The pledged portion of the intercompany claim is represented by two negotiable notes. (Ex. Vol. II, 358, 359) The RCC also made loans to the Missouri Pacific in 1932 which were secured by pledged collateral and a second lien on the collateral pledged by the Missouri Pacific with the RFC. (R. 1159) As of May 29, 1946, the RCC loans, with interest, amounted to over $1,900,000. (R. 1160) Until Petitioner filed his Statement of Points on May 13, 1946 (R. 40, 41, 48), there had not been even so much as a suggestion that the RFC and the RCC were not bona fide pledgees for value of $9,955,226.78 of the intercompany claim. Indeed, at the opening of the hearing in the district court, Petitioner's counsel in effect agreed that the RFC was a bona fide pledgee holder of the New Orleans notes and freely conceded that said notes "in the hands of the RFC or its assigns constitute the valid, legal and binding obligations of the New Orleans to the extent required to satisfy the RFC's loans". (R. 382-386, 334; see also R. 176-177, 186-187) This is a concession which had to be made. The rule that the pledge of a negotiable instrument to a bona fide pledgee cuts off all equities of third parties is firmly established in our law.[1] Thus, the pledge by the Missouri Pacific of the two New Orleans notes in negotiable form aggregating $9,955,226.78 in principal sum, as security for the loans made to the Missouri Pacific by

[1] *New Bern Oil & Fertilizer Co.* v. *Nat. Bank*, 28 F. 2d 554 (C.C.A. 4th, 1928); *Turpin* v. *Dye*, 104 Ind. App. 337, 11 N.E. 2d 70 (1937); *Robb* v. *Cordova*, 127 Cal. 588, 16 Pac. 2d 325 (1932); *R. F. C.* v. *Thomson*, 186 La. 1, 171 So. 553 (1936). See also Unif. Neg. Inst. L. §§57, 52 and 27 constituting Mo. Rev. Stat. §§3072, 3067 and 3043 (1939).

the RFC and the RCC, operated to cut off any defenses or equities which might have been asserted by or through the New Orleans.

However, Petitioner took the position that the market value of the RFC collateral, exclusive of the intercompany claim, was at the time of the trial in excess of the amount due on the loan. Accordingly, he urged that under rules of marshaling the RFC would be required to satisfy its claim out of its other collateral. (R. 384-386; see also R. 1255) This contention is without merit. For the purpose of allocating new securities in reorganization, market value, and particularly market value at a given date, is of little importance. Value for purposes of reorganization is based upon a number of factors, the most important of which is earning power.[2] For purposes of the 1944 Plan and this review, a valuation of the RFC and the RCC collateral has been made by the Commission. In its Supplemental Report of July 4, 1944 approving the 1944 Plan, the Commission made the following finding:

> "It may be added that certain of the junior creditors also contend that the excess in value, if any, of collateral securing the Finance Corporation, Railroad Credit Corporation and bank loans also fall within the category of free assets. The value of this collateral is discussed hereinafter. The Railroad Credit Corporation has a second lien upon all collateral securing the Finance Corporation loans. Such of the collateral as has a market value is subject to wide fluctuations in price. The record does not warrant a finding of any excess value of the collateral securing

[2] Section 77(e) (last paragraph); *Ecker* v. *Western Pacific R.R.*, 318 U.S. 448, 483 (1943); *Group of Investors* v. *Milwaukee R.R.*, 318 U.S. 523, 541 (1943); *Old Colony Bondholders et al.* v. *New York, N. H. & H. R. Co.*, 161 F. 2d 413, 419-422 (C.C.A. 2d, 1947) cert. den. 331 U.S. 858 (1947). This also applies to the finding of the district court as to the market value on a particular date of the RFC and the RCC collateral. (R. 1156, 1164, 1177)

these loans over the amount of the loans". (R. 20761-20762)

Such a finding of value may not be challenged except by showing that the Commission acted arbitrarily or in contravention of law.[1] None of Petitioner's objections pertains to this finding. (R. 227) He offered no evidence at the trial to refute it. Therefore, the above quoted finding of the Commission conclusively determines that the RFC and the RCC needed all of the collateral pledged with them to support the new securities allocated to them under the 1944 Plan. So long as this finding stands, all questions as to marshaling are eliminated.

Accordingly, the district court correctly affirmed the action of the Commission allocating new securities, based on the pledged portion of the intercompany claim, only to the RFC and the RCC. (FF. 23, R. 20; CL. 9 and 10, R. 31-32) Thus, in so far as the pledged portion of the intercompany claim is concerned, Petitioner's Objection 19 was properly overruled.

On May 29, 1946, over four months after entry of the order overruling Petitioner's Objection 19, the district court entered two orders. One authorized Mr. Thompson, as trustee of the Missouri Pacific, to purchase the RFC claim and the collateral securing the same for the sum of $26,033,385.[2] (R. 1155) The other authorized him to purchase the claim of the RCC and the collateral securing the same for the sum of $1,934,507.[2] (R. 1164) These two orders are based on petitions of the trustee for instructions. (R. 1129, 1158) At the hearing on these petitions the First and Refunding and the General Mortgage and

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[1] *Ecker* v. *Western Pac. R.R.*, 318 U.S. 448, 472 (1943); *Group of Investors* v. *Milwaukee R.R.*, 318 U.S. 523 (1943).

[2] Computed by the trustee as of June 30, 1946. (R. 1129, 1158) The exact amounts actually paid in settling with the RFC and RCC do not appear in the record.

the petition of the trustees of the First and Refunding Mortgage for sequestration of income were admitted in evidence without objection.[1] (R. 1190-1191) The chief accounting officer of the Missouri Pacific trustee in bankruptcy testified that substantially all of the surplus funds in the Missouri Pacific estate available for settlement with the RFC and the RCC were derived from property subject to the First and Refunding and General mortgages. (R. 1188)

Petitioner served no answer to either of the above mentioned petitions of the trustee in bankruptcy. He was represented at the May 9, 1946 hearing on these petitions but offered no evidence. (R. 1169) His counsel made a statement at the close of this hearing urging that the RFC and the RCC loans be paid. (R. 1253) It was also urged on Petitioner's behalf that the district court should defer determining the rights of the First and Refunding bondholders with respect to the RFC and RCC collateral and the funds to be used for the paying of their claims. (R. 1254-1257)

The District Court did not undertake to determine the nature and extent of the liens on the funds to be used for purchase of the Missouri Pacific notes held by the RFC and RCC. It did, however, insert provisions in each of the above mentioned orders for the protection of the interests of the lien creditors in these funds. Except for the reference in the quotation below to the RFC, paragraph 2 of each of the orders is the same:

> "That the notes and collateral so acquired from R.F.C. shall be held by Trustee for the benefit of the holders of Missouri Pacific Railroad Company First

[1] There is outstanding in the hands of the public $223,190,500 principal amount of First and Refunding Mortgage Bonds and $49,339,421 principal amount of General Mortgage Bonds. (R. 20679)

and Refunding Mortgage Bonds outstanding, and for the benefit of any other creditors of said Debtor Company, to the extent of their respective interests, if any, in the cash used in the purchase of said notes and collateral as the same may appear or may be hereafter determined by the Court or any Reorganization Plan, such holders or other creditors being hereby subrogated to the interest, rights, liens, and benefits of the R.F.C. under its said claim and in and to such notes and the collateral pledged as security therefor, to the end that their respective rights and interests may be fully protected in any marshaling of the assets of the Debtor Company or under the terms of any Plan of Reorganization that may be finally confirmed in these proceedings; and the Court hereby expressly reserves jurisdiction to make from time to time such further order or orders as may be deemed necessary or appropriate to protect and enforce the rights and equities of said bondholders and such other creditors in the premises". (R. 1157, 1165)

Petitioner did not appeal from either of these two orders.

The granting clauses of the First and Refunding Mortgage contain a pledge of "tolls, income, rents, revenues, issues and profits" from the mortgaged property. (Ex. Vol. II, 314) Article Eight of the First and Refunding Mortgage grants to the trustees of said mortgage the right to enter upon the mortgaged property, operate it and collect and receive all tolls, earnings, income, rents and profits thereof upon the happening of specified events of default, including a default in the payment of any installment of interest on any of the First and Refunding Bonds which continues for a period of three months. (Ex. Vol. II, 315-322) Similar provisions are contained in the Missouri Pacific General Mortgage. (Ex. Vol. II, 327-333) On June 7, 1933, the trustees of the First and Refunding Mortgage filed a petition in the court below requesting sequestration of income. (Ex. Vol. II, 335-351)

There can be no doubt that the surplus funds derived from the property subject to the liens of these two mortgages are also subject to those liens. In some jurisdictions a bankruptcy trustee or receiver collecting income from mortgaged properties after default acts, from the day of appointment, for mortgage creditors in the order of their pledge priorities regardless of whether they formally demand sequestration.[1] In other jurisdictions it is required that the mortgagee first demand sequestration.[2] The trustees for the First and Refunding Mortgage, no doubt out of abundant caution, complied with the stricter rule. (Ex. Vol. II, 335) Thus, it is clear that the First and Refunding and General Mortgage bondholders had first and second liens, respectively, upon substantially all of the funds used by the trustee in bankruptcy in purchasing the RFC and RCC claims.[3] The other creditors, who may have a minor interest in these funds, are the Central Branch Union Pacific First Mortgage bondholders, the Little Rock, Hot Springs & Western First Mortgage bondholders and the Cairo & Thebes First Mortgage bondholders. (R. 1188)

If it should become necessary, the district court will

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[1] *Mortgage Loan Co.* v. *Livingston*, 45 Fed. 2d 28 (C.C.A. 8th, 1930); *In re Wakey*, 50 Fed. 2d 869 (C.C.A. 7th, 1931); *Associated Co.* v. *Greenhut*, 66 Fed. 2d 428 (C.C.A. 3rd, 1933), cert. den. 290 U.S. 695, 696 (1933); *Brooks* v. *St. Louis-S.F. Ry.*, 153 F. 2nd 312, 317 (C.C.A. 8th, 1946), cert. den. 328 U.S. 868 (1946).

[2] *Freedman's Saving Co.* v. *Shepherd*, 127 U.S. 494 (1888); *In re Brose*, 254 Fed. 664 (C.C.A. 2d, 1918); *In re Hotel St. James Co.*, 65 F. 2d 82 (C.C.A. 9th, 1933).

[3] The order (Ex. Vol. II, 354) entered upon the sequestration petition did not require an impounding of the income from the property subject to the First and Refunding Mortgage. It directed that separate accounts be kept so as to show such income. Thus the lien of that mortgage upon the income may not be a full legal lien, but rather an equitable one, arising from the obligation of the trustee in bankruptcy to account for the funds coming into his hands.

determine the extent of the liens of the First and Refunding and the other mortgage creditors upon the surplus funds. However, we do not believe that a precise determination of these matters will ever be necessary. That would involve a long and wasteful accounting proceeding. The law and the facts just reviewed are sufficiently clear to enable the Commission and the Courts to determine the fairness of any plan for reorganization of the Missouri Pacific System.

As a result of the two above mentioned orders of May 29, 1946, the First and Refunding bondholders and other creditors have been subrogated to the rights of the RFC and the RCC in the Missouri Pacific notes formerly held by them and in the collateral securing said notes. Thereby these creditors as pledgees acquired perfect title to the pledged New Orleans notes.[1] Mr. Thompson, as trustee of the Missouri Pacific, holds these Missouri Pacific notes and the collateral securing them, not as a part of the general assets of the Missouri Pacific estate, but as trustee for the First and Refunding and other lien creditors subject to the terms of the subrogation orders.

Since no appeals were taken from these orders, they have become the law of the case, binding on Petitioner and all other Secured Serial bondholders.

The plan has been returned to the Commission for further proceedings in accordance with Section 77(d). In these proceedings the Commission will no doubt review its finding as to the value of the collateral formerly held by the RFC and the RCC. As noted at page 37, *supra*, the

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[1] Unif. Neg. Inst. L. §58 (1939 Mo. Rev. Stat. §3073). *In re Canal Bank & Trust Co.*, 186 La. 366, 172 So. 421 (1937); *Toll* v. *Monitor Binding & Printing Co.*, 26 Fed. 2d 51 (C.C.A. 8th, 1928); *Burnes* v. *New Mineral Fertilizer Co.*, 218 Mass. 300, 105 N.E. 1074 (1914); *Horan* v. *Mason*, 141 App. Div. 89, 125 N.Y. Supp. 668 (1910).

Missouri Pacific trustee used a total of $27,967,892 in cash which constituted income derived from property subject to the lien of the First and Refunding and certain first lien divisional mortgages, to satisfy the RFC and RCC claims. These lien creditors are now entitled to receive an allocation of new securities as nearly equivalent to $27,967,892 in cash as the collateral formerly held by the RFC and the RCC will justify. If all of that collateral is needed to support such an allocation, there can be no subordination of the pledged portion of the intercompany claim. Only if the Commission finds that the pledged portion of the intercompany claim or some part thereof is not required to support such an allocation will any question concerning such subordination arise. In the present state of the record, Petitioner's case revolves about the $610,000 principal sum of the intercompany claim which was not pledged with the RFC and the RCC.

POINT III

The Courts below properly held that the intercompany claim should not be subordinated.

Petitioner relies upon *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307 (1939) and *In re Commonwealth Light & Power Co.*, 141 F. 2d 734 (C.C.A. 7th, 1944), contending that these decisions require that the intercompany claim in its entirety be subordinated to the interests of the holders and pledgees of the capital stock of the New Orleans. His brief selects facts from these cases for special emphasis. These are compared with Petitioner's version of selected facts from the record herein. As a result, his brief omits to state, or lightly passes over, several of the important facts which we think influenced the decisions in the cases upon which he relies. It is, therefore, necessary to supplement Petitioner's statement of these cases.

The Deep Rock Case.

Petitioner's brief omits to mention a transaction between the Deep Rock and its parent, Standard, to which about two and one-half pages of Mr. Justice Roberts' opinion is devoted. (306 U.S. 317-320) This transaction involved acquisition of the "Bradstreet properties" and a cracking plant in the names of dummies. Deep Rock was charged with the advances made by Standard for their acquisition. Subsequently Standard, through another subsidiary, acquired the properties and credited back to Deep Rock the amount of these advances. Standard thereby controlled the Bradstreet properties and cracking plant without which Deep Rock could not function. Deep Rock was then required to lease these properties for a term of years during which they were operated at a heavy loss. Nevertheless, Standard caused Deep Rock to renew the lease, which resulted in further heavy losses. The records

contained inconsistent statements as to who was the real owner of the properties.

The $9,000,000 of open account indebtedness owed by Deep Rock to Standard at the time of bankruptcy included such items as interest compounded monthly, management fees charged by one of the Byllesby affiliates of Standard and rental of properties which Standard had purchased for the account of Deep Rock. The debits amounted to over $52,000,000, against which there were credits in Deep Rock's favor of $43,000,000.

It is not possible to reconstruct the Deep Rock balance sheets from the facts given in the Court's opinion. However, enough is shown to indicate that during most of the period from 1919 to the date of bankruptcy in 1933 publicly held indebtedness and preferred stock of Deep Rock, together with its indebtedness owing to Standard, were so large as to leave no equity for the common stock through which Standard exercised its control over Deep Rock. One of Standard's officials admitted that during most of the period following its organization Deep Rock was "two jumps ahead of the wolf". (306 U.S. at 310)

Petitioner cites the *Deep Rock* record to show that during this period Deep Rock had earnings substantially in excess of its dividends. However, these were earnings shown by the unaudited books of Deep Rock which were under the control of Standard. Mr. Justice Roberts' opinion suggests some skepticism as to the reliability of these books. This doubt seems justified by the fact that the income tax returns of Deep Rock for the same period reported a deficit of $9,000,000. (*Deep Rock Record*, Supreme Court, Vol. III, Ex. 93) In contrast it should be noted that the books of the GCL were required to be kept in accordance with elaborate regulations of the Commission. The Bureau of Accounts of the Commission made frequent and thorough audits of the GCL books. (R. 681-683; FF. 30, R. 23)

There can be no doubt that mismanagement and overreaching permeated the whole relationship between Standard and Deep Rock.

The Commonwealth Case.

In the *Commonwealth* case the parent, Inland, sold an issue of bonds, referred to in the opinion as the Inland bonds, which were secured by the pledge of all the outstanding common stocks of five subsidiary operating companies, including Michigan. The balance sheet of Michigan at organization represented this stock as having a stated value of $1,250,000. (141 F. 2d, at 738) The fact was, however, that if an unjustified initial write-up of $1,966,509 had been eliminated, Michigan's indebtedness would have exceeded the investment in the properties involved to the extent of $162,069. Against this investment of $2,203,845, Michigan had outstanding $2,000,000 of bonds and owed its parent, Inland, $365,914. (*ibid.*, at 737) This initial deficiency in the stated value of the stock wronged the Inland bondholders and was never corrected. Every loan thereafter made to Michigan and every dividend which it declared merely served to aggravate the original wrong done to the Inland bondholders. In contrast to the facts of the *Commonwealth* case, we find that in the instant case the New Orleans, at the time of its acquisition by the Missouri Pacific, was adequately capitalized (R. 266-267) and furthermore that the character and amount of its capitalization was thereafter to a large extent subject to supervision and control of the Commission. Unlike the instant case, the master who tried the facts in the *Commonwealth* case found overreaching and mismanagement.

Analysis of Petitioner's Contentions.

Petitioner's charges as to acquisition of the short lines, the saddling transaction and dividends out of capital have

been dealt with in the preceding statement of facts. He has failed to show that the findings as to these matters were clearly wrong. These are factual questions which require no further consideration.

Before proceeding to the fundamentals, it is necessary to consider Petitioner's argument which proceeds from the premise that borrowing to pay dividends is improper. Contradicting the findings (FF. 18; R. 18) Petitioner asserts that certain of the advances to the New Orleans were for the purpose of financing dividends. Much of Petitioner's argument is based on this contention. The argument only results in confusing the real issues. It substitutes a phrase for thoughtful analysis. There are statements in the *Deep Rock* case which imply that there may be some impropriety in borrowing to pay dividends. In the circumstances of that case borrowing for such a purpose was obviously improper. Certainly it was not the intention of this Court to lay down the rule that borrowing to pay dividends is illegal or improper *per se*. The real objection in the *Deep Rock* case was that funds were borrowed to pay improper dividends. The borrowing was merely one of a number of circumstances which led to the conclusion that the dividends were improper. This interpretation of the language of Mr. Justice Roberts in the *Deep Rock* case is consistent with established rules of corporate law.[1]

In the *Commonwealth* case the court, in describing the conduct of Inland, stated:

> "• • • Also, Michigan, not of its own volition but upon the demand and under the domination of Inland

[1] *Excelsior Water & Mining Co.* v. *Pierce*, 90 Cal. 131; 27 Pac. 44 (1891); *Bankers Trust Co.* v. *R. E. Dietz Co.*, 157 App. Div. 594, 142 N.Y. Supp. 847 (1913); *Alabama Consolidated Coal & Iron Co.* v. *Baltimore Trust Co.*, 197 Fed. 347 (D.C., D. Md. 1912); *Haseltine* v. *Belfast & M. H. L. R. Co.*, 79 Me. 411, 10 Atl. 328 (1887); *Cox* v. *Leahy*, 209 App. Div. 313, 204 N.Y. Supp. 741 (1924).

was required to declare and pay in dividends approximately 80% of its income, at the time when Michigan was engaged on an extensive rehabilitation and expansion program which it was unable to finance out of its own income.* * *" (141 F. 2d, at 738)

Later in the opinion the Michigan dividends are criticized. We do not attempt to justify the Michigan dividends. However, Petitioner seems to construe the *Commonwealth* decision as holding that a corporation borrowing to finance an expansion program may not pay dividends. We disagree with Petitioner's interpretation of the decision. If a rule such as is suggested by Petitioner had been in effect, it would have prevented the construction of a very large part of the productive facilities of the United States. Few corporations today can meet such a test. It would tend to hinder equity financing. The propriety of dividends in such situations depends upon a number of factors. Important among these would be the amount of surplus on hand at the time of declaration, working capital, and past and prospective earnings. If adequate provision is made for amortization of debt, the mere fact that a corporation is borrowing ought not to preclude payment of dividends.

This leaves for consideration the real basis upon which Petitioner must predicate his contention that the intercompany claim should be subordinated. Upon analysis the contention rests upon three grounds: (1) control of the New Orleans by the Missouri Pacific, (2) the alleged inadequate capitalization of the New Orleans, and (3) the alleged improper dividends paid by the New Orleans.

(1) Missouri Pacific control. We freely concede that the element of control exists in the instant case. As the controlling stockholder of the New Orleans, the Missouri

Pacific was a fiduciary. The word "fiduciary" has frequently been loosely used, indicating that its meaning is not always understood. There are various kinds of fiduciaries. The obligations of a controlling stockholder are, for example, not the same as those of a testamentary or express trustee. All fiduciaries have one common attribute. They exercise powers to deal with property or affect rights of those to whom they stand in a fiduciary relationship. Such powers may not be exercised in a manner which will give an advantage to the fiduciary. Thus, the Missouri Pacific, as a majority stockholder, had an obligation to deal fairly with the New Orleans and to do nothing which would improperly prefer it over the holders and pledgees of the securities of the New Orleans.

The Missouri Pacific acquired its controlling interest in the GCL in accordance with an expressed policy of Congress. 49 USCA §5(2); *Control of Gulf Coast Lines by Missouri Pacific R. R.*, 94 ICC 191 (1924). These carriers operate connecting railroads. Thus, it was inherent in the relationship from its inception that there should be a continuing flow of business transactions between them. Such extensive dealings would not be tolerated between a testamentary or express trustee and his *cestui*.

That the Missouri Pacific was a fiduciary does not mean that it was a guarantor of the successful outcome of all transactions in which it and the New Orleans participated. Nor does it mean that the Missouri Pacific was required to subordinate its own interests to those of the New Orleans or that it was expected to exercise superior judgment. The law permits a fiduciary to make honest mistakes. The test of the conduct of the Missouri Pacific as a fiduciary is whether or not it acted in good faith and exercised the judgment which would be expected of an independent management of the New Orleans. This test does not require the Missouri Pacific to be vindicated by subsequent

events or that, in judging its conduct, hindsight is to be substituted for foresight.[1] Application of this test imposes a difficult burden as there is an almost irresistible temptation to allow the transactions under scrutiny to be colored by events which followed.

(2) Capitalization of the New Orleans. The contention that the New Orleans was inadequately capitalized is based primarily on the substantial increase in the New Orleans debt over the period 1924-1932 and the fact that there was no increase in its capital stock during that period. The amount of indebtedness or increase of indebtedness alone is certainly not evidence of inadequate capitalization. The adequacy of the capitalization of a corporate enterprise is tested by whether or not there has been a sufficient investment in the junior stock through which control is exercised, having in mind the risks of the business and the total amount invested in the enterprise. The decisions may be searched in vain for a standard by which to test adequacy of capitalization. No rigid standard has been established. Each case presents a different situation which must be judged upon its own facts.

An examination of the GCL consolidated balance sheet as of August 1, 1931 (R. 81) shows an investment in the common stock of $15,000,000, to which should be added corporate surplus of approximately $8,000,000. This total equity of about $23,000,000 was more than two times the principal sum of the advances about which Petitioner now complains. Clearly the obviously inadequate capitalizations dealt with in the *Deep Rock* and *Commonwealth* cases will not bear comparison with the capitalization of the GCL.

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[1] *Matter of Clark*, 257 N.Y. 132, 140; 177 N.E. 397 (1931); *Crabb* v. *Young*, 92 N.Y. 56, 66 (1883); *Pine* v. *White*, 175 Mass. 585; 56 N.E. 967 (1900); *Taft* v. *Smith*, 186 Mass. 31; 70 N.E. 1031 (1904); *Fairleigh* v. *Fidelity National Bank & Trust Co.*, 335 Mo. 360; 73 S.W. 2d 248, 256 (1934); *Thompson* v. *Hays*, 11 F. 2d 244 (C.C.A. 8th, 1926).

Petitioner criticizes the Missouri Pacific advances to the New Orleans. He suggests that, instead of the advances, the Missouri Pacific should have made contributions to capital of the New Orleans. As previously noted, financing of the improvement program followed an established policy. Initially the improvements were financed by short term borrowings. When these were of sufficient size they were refunded by issuance of long term obligations. This method of financing the improvement program operated successfully until it was halted by the depression. (see p. 20, *supra*) Nothing in these facts suggests that the Missouri Pacific was seeking to prefer itself over others in anticipation of bankruptcy.[1] The record furnishes an example which makes it possible to apply the arm's length test to the policy adopted for the financing of the GCL improvements. We find that the Missouri Pacific adopted the same policy in financing its own improvements. (Ex. 271-277, R. 887-896) This refutes any suggestion that the financing of the GCL improvements was done in bad faith and in disregard of fiduciary obligations. Even if it could be shown that this financing contributed to the ultimate filing under Section 77 by the Missouri Pacific and the New Orleans, it is perfectly apparent that the Missouri Pacific suffered greater injury than the New Orleans. The Commission has found the Missouri Pacific to be insolvent (R. 20801-20813, 20863, 20956), whereas it determined that the New Orleans common stock has value (R. 20955).

There can be no real objection to the short term ad-

[1] Further substantiation of this is found in the fact that throughout the entire period of Missouri Pacific control it continued to buy in outstanding shares of New Orleans common stock. Between January 15, 1925, approximately the date when the Missouri Pacific assumed control, and the date of bankruptcy the Missouri Pacific holdings of New Orleans common stock increased from 69.38% to 93.15%. As late as 1930, the Missouri Pacific paid $142,905.26 for 1,193 shares of this stock, or an average of about $120 per share. (Ex. 177, R. 630)

vances. It would have been wasteful for the New Orleans to have anticipated the cash requirements of its improvement program by issuing long term bonds several years in advance of the actual expenditures for that purpose. The funds would have remained idle until they could be used, thus building up unnecessary interest charges.

The real question presented by these facts has little to do with the advances. They served only a temporary purpose. Rather the question is whether or not the Missouri Pacific management acted properly in financing the improvement program by the creation of additional debt. In considering this question it is important to note that every dollar of long term debt issued by the New Orleans after 1924 required Commission approval under Section 20a of the Interstate Commerce Act. 49 USCA §20a.

The advances made after the full force of the depression began to be felt were to aid the New Orleans in overcoming deficits. These advances were used to pay such items as interest on funded debt and sinking fund instalments. (FF. 18, R. 18-19) Advances for such purposes were beneficial to the New Orleans and its stockholders. A lenient creditor was substituted for those who would not wait. In such circumstances it is inconceivable that anyone dealing at arm's length with the New Orleans would have supplied the needed funds by subscribing to capital stock of the New Orleans. The propriety of these later advances may be tested by comparing the Missouri Pacific's conduct with what others did under similar circumstances. As late as 1932 and 1933 the RFC and the RCC were making advances to the Missouri Pacific for similar purposes. (R. 110, 1159) In the footnote other instances are cited.[1]

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[1] Loans approved: *Chicago, M., St. P. & Pac. R. R.*, 184 ICC 714 (June 27, 1932); *Chicago & N. W. Ry.*, 180 ICC 533 (Feb. 23, 1932), 193 ICC 370 (Aug. 8, 1933); *Chicago, R. I. & Pac. Ry.*, 184 ICC 597 (June 15, 1932), 189 ICC 522 (Feb. 28, 1933).

There can be no doubt that the advances which now constitute the intercompany claim will meet the test of fairness.

We have heretofore referred to the provisions of Section 20a of the Interstate Commerce Act. That section was designed to give the Commission a large degree of control over the capitalization of railroad corporations. (49 USCA §20a) During the period of Missouri Pacific control, the New Orleans was not permitted to issue, except as provided in §20a(9), any of its first mortgage bonds or other securities without Commission approval.[1] The authorization by the Commission of $7,456,726 of the intercompany claim has already been noted. (pp. 23-24, *supra*) In passing upon the propriety of authorizing the issuance of this note, the Commission was fully advised as to the remainder of the intercompany indebtedness which had been issued under Section 20a(9). *New Orleans, Texas & Mexico Railway Company Notes*, Finance Docket No. 9817, 189 ICC 600 (1933). This action of the Commission is entitled to the greatest weight in passing judgment on the adequacy of the New Orleans capitalization and the propriety of the Missouri Pacific advances. (See R. 1110)

It seems to be perfectly clear that Petitioner has failed to make out any sort of a case on the inadequacy of the New Orleans capitalization.

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[1] The suggestion that the proceedings before the Commission resulting in the authorization of securities were *ex parte* and, therefore, entitled to no weight is without merit. The Commission kept itself informed as to the affairs of the GCL through frequent and thorough audits of its books and by detailed reports made by the New Orleans to the Commission's Bureau of Valuation. (FF. 30, R. 23; R. 955-956) At each proceeding for the authorization of funded debt the New Orleans was required to submit a mass of material as to additions and betterments in support of its application. (R. 889-890, 908; see, also R. 1018-1019) In such proceedings the Commission performed a statutory duty. Its decisions in such matters are binding. Moreover, the Commission stated in its report on the 1944 Plan that it was well acquainted with the basis of Petitioner's charges. (R. 20841)

(3) The New Orleans Dividends. In considering the New Orleans dividends it is pertinent to first note that the Secured Serial bondholders were pledgees of New Orleans common stock. The indenture under which their bonds were issued permitted the payment of dividends by the New Orleans. (FF. 7, R. 12) They were advised in the prospectus by which their bonds were offered that dividends at the rate of 7% per annum were being paid. (FF. 7, R. 11) These facts would, of course, not justify improper dividends, but they do show that the Missouri Pacific had a clear right to all dividends which would meet the fairness test. Any dividend of the New Orleans would reduce its assets. That result, however, would not give the Secured Serial bondholders just cause for complaint.

Petitioner seeks to show that there was less justification for the New Orleans dividends than there was for the dividends dealt with in the *Deep Rock* and *Commonwealth* cases. In the *Deep Rock* case there was doubt as to whether reported earnings were not, in reality, a deficit of $9,000,000. This Court described the dividends as having been paid over a long course of years by a company "on the precipice of bankruptcy". In the *Commonwealth* case dividends amounted to 80% of reported earnings. However, because of the deficiency in the stated value of the common stock of Michigan, it was improper to pay any dividends.

The consolidated income account[1] of the GCL from March 1, 1916 to December 31, 1944 is shown on Group

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[1] For the reasons stated at page 32, *supra*, the consolidated earnings of the GCL are important in considering the propriety of the New Orleans dividends. No dividends paid by the New Orleans were based on the undistributed surplus of the GCL subsidiaries. Appendix II of this brief supplements Group Exhibit 38 (Ex. 299, R. 912) by bringing the consolidated earnings of the GCL down to December 31, 1947.

Exhibits 38 and 39. (Ex. 299, 300, R. 912, 913) Consolidated net income of the GCL from March 1, 1916 to the end of 1931 and accumulated net income at December 31 of each of the years during that period are shown on Group Exhibit 40. (Ex. 301, R. 914) This exhibit also shows all dividends declared by the New Orleans from March 1, 1916 to December 31, 1931. There are various methods by which the dividends and income of the GCL may be stated. Petitioner has stated them in a biased manner. The table below shows in condensed form most of the pertinent figures which bear on the dividends.

GULF COAST LINES

Year	Gross Operating Revenue 1	Gross Additions and Betterments 2	Charges to Operating Expenses in Connection with Additions and Betterments 3	Net Income 4	Excess of Cumulative Net Income over Cumulative Dividends at 12/31 5
1924	$15,007,603.	$1,422,667.	—	$2,957,126.	$4,125,987.
1925	15,860,110.	4,070,050.	$343,510.	2,547,633.	5,634,521.
1926	20,104,866.	3,399,936.	592,167.	1,783,278.	6,379,632.
1927	19,082,675.	6,074,361.	715,093.	202,438.-D	5,138,968.
1928	18,664,495.	2,682,837.	379,005.	956,433.	5,057,201.
1929	18,917,440.	3,835,671.	285,601.	845,064.	4,864,067.
1930	16,819,492.	2,029,832.	756,160.	674,950.	4,500,818.
1931	13,435,533.	1,005,199.	234,470.	1,122,422.-D	2,340,199.

D-Deficit

1. Ex. 299, R. 912
2. Ex. 297, R. 910
3. Ex. 303, R. 915
   Average Annual Charges:
   (a) Period of Baldwin Improvement Program (1925-1930).... $511,923.
   (b) From end of Baldwin Improvement Program to Beginning of War (1931-1939)..... 183,715.
   (c) War Period (1940-1944)..... 334,598.
4. Ex. 301, R. 914. Annual dividends of the New Orleans 1925-1931 were $1,038,198 (id.).
5. Ex. 301, R. 914. Cumulative from 1916 to the end of the year shown in first column.

It will be noted that in each year during the period 1925-1930 accumulated earnings exceeded all dividends there-

tofore paid by more than $4,500,000. On December 31, 1924, the approximate date when the Missouri Pacific assumed control of the GCL (FF. 6, R. 11), accumulated earnings exceeded dividends by $4,125,087. At December 31, 1930 accumulated earnings exceeded dividends by $4,500,819. In the period 1925-1930 there was only one year in which the GCL sustained a deficit. That was in 1927 when the GCL was seriously affected by floods. It was not likely that such floods would recur for a number of years. (R. 912) In view of the ample surplus of cumulative earnings in 1927, there was no impropriety in continuing the dividend in that year. Also bearing on the propriety of the dividends during the period 1925-1931 was the fact that charges to operating expenses in connection with the heavy improvement program averaged more than $470,000 per year. By way of comparison, during the succeeding nine years these charges dropped to an average of $183,715 per annum. (Ex. 303, R. 915-916) In the light of these facts we think there can be no criticism of the New Orleans directors in declaring regular dividends throughout the period 1925-1930. On facts like these we think this Court will be reluctant to substitute its judgment for that of the management, especially after the lapse of more than seventeen years. The two courts below refused to do so. There can be honest differences of opinion about these facts. They do not, however, suggest any impropriety.

There remains to be considered the year 1931. That was the last year in which dividends were declared on the New Orleans capital stock. The regular 7% dividend was paid in that year, although the GCL sustained a deficit in excess of $1,000,000. (Ex. 301, R. 914) With the benefit of hindsight, it would appear that maintenance of the dividend in 1931 was inadvisable. However, the decision of the board in this regard may not be judged by what happened afterward. In determining whether or not the

New Orleans board acted in good faith, they may be judged only by the facts which were available to them at that time. Several of the members of the board were dead at the time of the hearing and it is impossible to determine all of the considerations they had in mind in continuing the regular dividend throughout 1931.

It is a well known fact that when business conditions are changing from prosperity to depression the change is revealed only gradually. The full results of operations in 1931 were not known until several months after the end of that year. We know that at the end of April 1931 Mr. Safford, the chief operating officer in Houston, was estimating net income of $457,000 for that year. (Ex. 137, R. 601) Mr. Baldwin was taking steps to see that the dividend would be earned. (Ex. 135, R. 601)

It is unlikely that the directors of the New Orleans were aware in 1931 that they were entering a period of one of the deepest depressions in history. There is nothing in the Baldwin-Safford correspondence in April 1931 which indicates that they were aware of the oncoming depression. (Ex. 135, R. 601) The Court will take judicial notice of the fact that businessmen generally were of the opinion in 1931 that the depressed conditions prevailing in the latter part of that year were temporary. *Barlow* v. *Budge*, 127 F. 2d 440, 443 (C.C.A. 8th, 1942), cert. den. 317 U.S. 647 (1942). The President of the United States thought so and requested businessmen to act accordingly. As events turned out, the Missouri Pacific directors and many other businessmen were mistaken in their judgment, but, as already noted, a fiduciary is not a guarantor.

As to the dividends under review, the position of the Missouri Pacific, as a majority stockholder of the New Orleans, was not greatly different from that of a stockholder in any independently managed corporation. Directors of any corporation are elected by stockholders who have a natural

desire for dividends. Conflicting with this desire is another —that the business be preserved on a sound financial basis. These conflicting influences, selfish though they may be, serve to create a balance. Where such influences are allowed free play, the courts have refused to substitute their judgment for that of the elected management.[1] Similar influences were at work in the relationship between the Missouri Pacific and the New Orleans. Missouri Pacific paid a very substantial sum for the common stock of the New Orleans. (Ex. 177, R. 630) The railroads of the Missouri Pacific and the GCL are end to end. The map opposite page 8, *supra*, indicates how the lines of the GCL complement those of the Missouri Pacific. The GCL lines, extending along the Texas and Louisiana gulf coast, serve a large agricultural area and a territory rich in natural resources. As far back as the 1920's, this area was developing rapidly. Group Exhibit 20 illustrates how the citrus and vegetable business was increasing in those years. (Ex. 263, R. 843; see also Group Exhibit 21; Ex. 265, R. 856) It is apparent that the chief interest of the Missouri Pacific was in the interchange of traffic with the GCL.[2] Dividends of $1,000,000 per annum were considerably less important than the Missouri Pacific's own revenues from this traffic. Thus, the Missouri Pacific had its own special reasons for wishing to preserve the GCL on a sound financial basis. To do otherwise would have risked foreclosure of the New Orleans first mortgage and possible sale of the property

[1] *E. g.*, *Raynolds* v. *Diamond Mills Paper Co.* 69 N.J. Eq. 299, 60 Atl. 941 (1905); *City Bank Farmers Trust Co.* v. *Hewitt Realty Co.* 257 N.Y. 62, 177 N.E. 309 (1931); *Bayer et al* v. *Beran et al* 49 N.Y.S. 2d 2 (Sup. Ct. 1944) (Sheintag, J.).

[2] In 1924 the Missouri Pacific estimated that the revenues from traffic to be delivered to it by the GCL would be not less than $3,000,000 annually. *Control of Gulf Coast Lines by Missouri Pacific R. R.*, 94 ICC 191, 194 (1924). This was just at the beginning of the rapid development of the perishable business from the lower Rio Grande Valley. (Ex. 263, R. 843)

to others. No stockholder of an independently managed corporation could have had greater reasons for desiring financial strength. In these circumstances it is unreasonable to assert that the Missouri Pacific caused the New Orleans dividends to be paid recklessly and in disregard of the effect such dividends would have on its own stockholding in the New Orleans.[1]

Conclusions to Be Drawn from All of the Facts.

The conclusion to be drawn from all of the facts bearing on the relationship of the Missouri Pacific with the GCL is widely at variance with the impression which Petitioner seeks to create. We have noted that the GCL was brought into the Missouri Pacific System as a part of a long-range program to make that system a first class railroad. We have also noted the vast sums which were expended in the improvement program to bring about that result. It is incredible that the men who conceived and carried out this program would wish to mismanage and injure the GCL—one of the vital elements of the system. We have seen that immediately upon acquisition the GCL maintenance expenditures were substantially increased, an extensive improvement program was inaugurated and that active steps were taken to increase GCL

[1] These conclusions are valid even if Petitioner's borrowing to pay dividends theories be accepted. As we have seen, the plan of the Missouri Pacific was to fund the advances whenever they were of sufficient size to warrant the public sale of bonds. Such bonds would, of course, take priority over the stock interest of the Missouri Pacific in the New Orleans. The funding of advances made to permit improper dividends would thus have been inconsistent with the vital interest of the Missouri Pacific in the New Orleans. But, of course, the Commission would never have permitted the funding of advances for dividends. This demonstrates again the utter futility of the borrowing to pay dividends discussion in Petitioner's brief.

traffic. We have also seen that in its dealings with the GCL in connection with divisions and traffic matters the Missouri Pacific made sure that the GCL was fairly and generously treated. Indeed, if we consider the advantages which the GCL obtained from the special arrangements made with the American Refrigerator Transit Company (pp. 16-17, *supra*) and the savings on the vegetable traffic diverted through Kinder (pp. 15-17, *supra*), these two items alone in dollars and cents will approximately equal all of the dividends received by the Missouri Pacific from the New Orleans in the entire period 1925-1931. These considerations cannot be brushed aside with the assertion that they are not "financial" matters. (Petitioner's brief, p. 24) A railroad can have no finances without traffic, nor can it have profitable traffic without a well-maintained roadbed and an adequate supply of equipment. All are intimately interrelated. This background of facts aids in reaching a conclusion regarding the conduct of the Missouri Pacific with respect to such matters as capitalization, the advances and the dividends. As to each of these, we have seen that the conduct of the Missouri Pacific, though not free from mistakes, will meet the test of fairness. There is abundant evidence to support the findings and conclusions of the courts below that the Missouri Pacific complied with its obligations as a majority stockholder. (FF. 33, R. 24)

Subordination Must Be Commensurate with the Injury.

The Petitioner's brief makes no attempt to deal with the fundamental principles which control the granting of the remedy of subordination. It is an equitable remedy designed to achieve equity. The Petitioner insists upon the complete subordination of the intercompany claim, but he makes no attempt to demonstrate that such a result would be equitable. The reason for full and complete

subordination in the *Deep Rock* case was that mismanagement and overreaching permeated the relationship between Deep Rock and Standard. It was impossible to untangle the many transactions between them so as to permit an approximation of the damage. Standard was responsible for the situation which prevented the making of a fair estimate as to the amount of the injury. As a result, the only available remedy was complete subordination of the parent's claim. This conclusion is confirmed by the opinion in *Pepper* v. *Litton*, 308 U.S. 295 (1939). Speaking of the subordination granted in the *Deep Rock* case, Mr. Justice Douglas wrote:

> "* * * This was based on the equities of the case—the history of spoliation, mismanagement, and faithless stewardship of the affairs of the subsidiary by Standard to the detriment of the public investors. * * *" (308 U.S. at 308)

As we have seen, the record now under review presents no such state of facts as the *Deep Rock* case presented.

Of course, if Petitioner were able to demonstrate that any of the Missouri Pacific loans to the New Orleans had been made in breach of fiduciary duty or that an improper preference had been obtained by making such loan, there would be a basis for subordination or adjustment of the priority of that loan. That, however, would not justify subordination of the entire intercompany claim. Subordination will be made commensurate with the wrong. This principle is clearly stated in an opinion of the court below:

> "* * * since bankruptcy, as we have suggested, is a final liquidation, the power of subordination necessarily must be measuredly and not blankly exercised. It must have a sound regard for the distribution results that will be produced to the creditor whose claim is being subordinated, as well as to the other creditors. It should not operate to take away anything punitively to which one creditor is justly

entitled in view of the liquidation finality, and bestow it upon others, who in the relative situation have no fair right to it. It can therefore ordinarily go no farther than to level off actual inequitable disparities on the bankruptcy terrain for which a creditor is responsible, to the point where they will not create unjust disadvantages in claim positions and liquidation results. And most especially, where there is an attempt to adjust equities between creditors of different legal classes, such as a lienholder and general creditors, must any subordination made of a higher legal right be scrupulously measured and fitted to the actual injury that has been done or the unjust enrichment that is involved." (*In re Kansas City Journal-Post Co.*, 144 F. 2d 791, 800-1 (C.C.A. 8th, 1944))

The Equities in Favor of Missouri Pacific Creditors.

Thus far subordination has been considered without reference to the creditors of the Missouri Pacific. The Commission has found that the Missouri Pacific is insolvent and that there are insufficient assets to satisfy the claims of all its creditors. (R. 20801-20813, 20863, 20956) These creditors are innocent of any of the alleged wrongs done to the New Orleans. The Missouri Pacific management stood in a fiduciary relationship to these creditors also. It would have been a breach of this fiduciary duty in the circumstances existing during the years 1932 and 1933 to have used Missouri Pacific funds as a capital contribution to the New Orleans or to have otherwise wasted Missouri Pacific assets in improper dealings with the New Orleans. The fact is that the New Orleans and its GCL subsidiaries received a dollar or dollar's worth for every one of the advances that constitute the intercompany claim. (Ex. 239, R. 791, 809; Ex. 221-225, R. 701) These are dollars upon which the Missouri Pacific creditors were entitled to rely for the satisfaction of their claims.

We do not assert that insolvency of a parent will in all cases preclude the subordination of its claim against a subsidiary.[1] There may be circumstances in which it would be inequitable to allow such a claim. If a claim against a subsidiary is defective or if its priority was obtained in breach of a fiduciary duty, disallowance or adjustment of priority would seem to be appropriate except where there is a change of position or a situation like that discussed in Point II *supra*. But the Petitioner makes out no such case. The fundamental basis upon which his request for subordination rests is that he and the New Orleans have been injured by various alleged wrongful acts of mismanagement, many of which are not even remotely connected with the intercompany claim. Subordination on such a basis would simply be the setting-off of a claim for damages to the New Orleans against the intercompany claim. Courts of bankruptcy refuse to grant such a set-off.[2] Nor will they presume that the Missouri Pacific

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[1] So far as we are aware, this Court has had no occasion to consider the interests of creditors of an insolvent parent in a case involving subordination. In making this statement we are aware of the argument made in the brief filed on behalf of Standard which is cited in the footnote on page 55 of Petitioner's brief. It is true that proceedings for the reorganization of Standard had been pending under old Section 77B of the Bankruptcy Act. *In re Standard Gas & Electric Co.*, 26 F. Supp. 636 (1939). Prior to the argument of the *Deep Rock* case in this Court the reorganization proceedings involving Standard had been terminated. The plan merely extended maturities and did not eliminate the interest of Standard's stockholders. The district court described the proceedings as "not a genuine reorganization". 26 F. Supp. 636, 641. We do not find that any of the creditors of Standard participated in the *Deep Rock* litigation in this Court. Therefore, this Court had no occasion seriously to consider the interest of Standard's creditors. See also *Consolidated Rock Products* v. *DuBois*, 312 U.S. 510, 524 (1941) and *Prudence Realization Corporation* v. *Geist*, 316 U.S. 89, 97 (1942); *Geist* v. *Prudence Realization Corp.*, 122 F. 2d 503, 508, n.3 (CCA 2d, 1941).

[2] *In re Becker Bros.*, 139 Fed. 366 (D.C. Pa., 1905); *In re Drusilla Carr Land Co.*, 107 F. 2nd 565, 567 (C.C.A. 7th, 1939); *cf. In re American Coils Co.*, 74 F. Supp. 723 (D. N.J., 1947).

estate in bankruptcy is enhanced by assets obtained from the New Orleans, however wrongfully. The fact must be established by tracing.[1] Even a *cestui* may not be preferred over other creditors in the distribution of the bankrupt estate of a defaulting trustee. Subordination may not be used to circumvent the long established rules for the equitable distribution of the assets of a bankrupt.

Aside from these considerations there is a balance of equities in favor of the Missouri Pacific creditors. The Secured Serial bondholders took as collateral for their bonds the most junior security in the New Orleans capitalization. Thereby they accepted the risks inherent in such a security. The real cause of their loss, if any loss there be,[2] was a world-wide economic depression to which the railroads of the west and southwest were particularly sensitive. This was one of the assumed risks. There is abundant evidence in the record to support the findings that the benefits to the New Orleans resulting from its affiliation with the Missouri Pacific far outweigh all of the New Orleans dividends. (FF. 33, R. 24) This is true of the measurable dollars and cents benefits without taking into account intangibles. We have also seen that the New Orleans received a full dollar's worth for each dollar of the advances. These facts weigh heavily in favor of the Missouri Pacific creditors.

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[1] *In re Hallet's Estate*, [1880] 13 Ch. D. 696; *Knauth, Nachod & Kuhne* v. *Latham & Co.*, et al., 242 U.S. 426 (1917); *In re See*, 209 Fed. 172.4(C.C.A. 2d, 1913); *In re A. D. Matthew's Sons, Inc.*, 238 Fed. 785 (C.C.A. 2d, 1916), cert. den. 243 U.S. 647 (1917); see Ames, Following Misappropriated Property into its Product, 19 Harvard L. Rev. 511, 520-522 (1906).

[2] At the end of November 1947, prior to the granting of the writ herein, the New Orleans common stock was quoted at 105 bid, 112 asked, and the Secured Serial Bonds were quoted at 106 bid, 108 asked. (Bank and Quotation Record, W. B. Dana & Co., New York, December 6, 1947, pp. 53, 55)

It thus becomes clear that Petitioner's effort to subordinate the intercompany claim is a mere attempt to prefer himself over other innocent creditors of the Missouri Pacific who had no part in the alleged breaches of fiduciary duty. Thus revealed, there is no equity in his plea. It should be rejected.

The courts below properly held that the Secured Serial bondholders are not entitled to have the intercompany claim, or any part thereof, subordinated to the capital stock of the New Orleans. (CL. 12, R. 32)

POINT IV

The District Court properly overruled Objection 19 on the ground of laches.

The district court, after review of the pertinent evidence, overruled Objection 19 on the ground of laches. (FF. 35-43, R. 25-29; CL. 15, R. 33; see also R. IV, 20)

If timely objection is made to the claim of a fiduciary against a debtor in reorganization proceedings, it becomes the duty of the court to carefully scrutinize such a claim before approving a plan. Also, if timely objection is made to such a claim in reorganization proceedings, determination of the validity and rank of such a claim must be made as a prerequisite to the formulation of a plan. These propositions are fundamental and we do not question them.

However, an objection is not timely merely because it is raised prior to approval of a plan under Section 77(e). That is especially true in a case such as this in which the order approves a second plan of reorganization in the proceedings. The doctrine of laches is equitable in nature. It recognizes that injuries and injustices may result from inexcusable delay in asserting rights. A brief review of

the facts will indicate both inexcusable delay in asserting Petitioner's Objection 19 and the serious prejudice which has resulted therefrom.

These proceedings were commenced March 31, 1933 by the filing of the petitions of the Missouri Pacific, the New Orleans and the I-GN under Section 77. (R. 173) The principal debtor filed a plan on October 1, 1935. The Commission held Section 77(d) hearings on that and other plans of reorganization, commencing in February 1936 and continuing intermittently thereafter until September 1937. (R. 175) During these hearings the debtor Missouri Pacific and security holders of the New Orleans placed in evidence detailed information about the GCL, which included much of the material upon which Petitioner now relies. (R. 159-160, 175, 387, 397, 20839-20843) The dates of the Missouri Pacific advances to the New Orleans and the dates and amounts of the New Orleans dividends were put in evidence at these hearings. (R. 83-87, 20839-20841) On January 10, 1940 the Commission's report and order approving the 1940 Plan was promulgated. (R. 20725) In July and October 1940 the court below held hearings on the 1940 Plan. In July 1941 the 1940 Plan was approved. (R. 124) Seven or eight appeals from the approval order were remanded on May 8, 1943 (R. 122) and the 1940 Plan was returned to the Commission. (R. 137) Further hearings were held by the Commission in Brooklyn in October 1943. (R. 141) Up to that time no representative of any Secured Serial bondholder had questioned the validity or propriety of the intercompany claim. (FF. 39, R. 27) The Petitioner appeared at the Brooklyn hearings for the first time in the proceedings. He was represented by counsel. The transcript of these proceedings shows quite plainly that Petitioner did not come to that hearing prepared to present evidence in support of his objection to the intercompany claim. (R. 154-164, 20840) He made

an attempt to cross-examine Mr. Wyer upon some of the matters, later included in his Objection 19, which had no relation to his direct testimony. (R. 157-162) The examiner in charge of the hearing declined to permit such cross-examination. (R. 162, 20841-20842) Petitioner made no attempt to call witnesses of his own for the purpose of introducing evidence bearing on the intercompany claim. (R. 20840)

A few days prior to the commencement of the Brooklyn hearing in October 1943, Petitioner wrote to the trustee demanding that he object to the intercompany claim. (FF. 41, R. 27, 655-658) Petitioner did nothing further until more than a year later when he filed a petition asking leave to object to the Missouri Pacific claim for advances. (R. 247) This petition was denied without prejudice on December 26, 1944. (R. 367) A similar petition had been filed by Petitioner's counsel on behalf of one Foley in July 1944. (R. 166)

As previously noted, the three principal grounds upon which Petitioner seeks subordination of the intercompany claim are (1) Missouri Pacific control of the GCL, (2) inadequacy of the New Orleans capitalization, and (3) the dividends paid by the New Orleans. (p. 47, *supra*) The basic facts with respect to all of these matters have been available to all parties since the inception of the proceedings. (R. 159-161, 20837-20842) Much of Petitioner's evidence was obtained from the GCL reports to the Commission which have been accessible since 1933. (R. 399-489) Mr. Thompson, the trustee in bankruptcy of the Missouri Pacific and the GCL, testified that early in 1934 he retained Messrs. Price, Waterhouse & Co. to make a thorough investigation of the affairs of the GCL. Price, Waterhouse & Co. completed their audit and prior to July 8, 1935 copies of it were filed with the court below and mailed to all parties who appeared in the proceedings, including Mr.

Brandwen who represented Petitioner at the trial below and who at that time represented a dissident committee of First and Refunding Mortgage bondholders. (FF. 25, R. 25, 659-660) This report included consolidated statements and statements for the individual companies. (R. 659-660) The Price, Waterhouse report disclosed the fact that the Missouri Pacific owned over 90% of the New Orleans stock, the details of the GCL capitalization and the fact that the New Orleans had paid regular dividends at the 7% rate throughout the period 1925-1931. It also disclosed the advances, as does the proof of claim filed by the Missouri Pacific in August 1933. (Ex. 1, R. 402) Thus, the basic facts upon which Comstock rests his case have been matters of record from the inception of these proceedings.

Since these proceedings were commenced at least seven representatives of various groups and individuals holding New Orleans securities have appeared before the Commission or the court below. Of these, five represented one or more Secured Serial bondholders or holders of common stock of the New Orleans. (FF. 38, R. 26) Petitioner refers to the petitions filed by the New Orleans First Mortgage trustee and committee. (Petitioner's brief, p. 60) It is significant that these petitions were never pressed.

It is obvious that Petitioner and his predecessors in interest have been guilty of inexcusable delay in presenting Objection 19.

There is ample evidence that the delay in presenting the matters which are the subject of Objection 19 has seriously prejudiced other Missouri Pacific creditors. The district court so found. (FF. 42, R. 28) Petitioner relies heavily on the correspondence between Mr. Baldwin and Mr. Safford, vice president and chief operating officer of the GCL. This correspondence is cited to show that the Missouri Pacific's primary interest in the GCL was in obtaining dividends. (Petitioner's brief, pp. 14-18) Mr. Saf-

ford died in April 1943. (Ex. Vol. II, 361) When we attempted to bring out a conversation between Mr. Kirkpatrick, the chief engineer of the GCL, and Mr. Safford concerning conditions in 1931, Petitioner objected. (R. 832-833) Mr. Safford's first-hand knowledge of the GCL would have been an invaluable aid in explaining the conditions which prevailed in 1931. His views and judgment as to maintenance, new facilities, traffic and prospective revenues and net earnings undoubtedly influenced the decisions of the board of directors of the New Orleans. What information Mr. Safford gave to Mr. Williams or to Mr. Van Sweringen and the extent to which it influenced their judgment are matters which probably would have had an important bearing on the issues here involved.

Mr. F. P. Johnson, who was vice president and chief financial officer of the Missouri Pacific and the GCL for a number of years, died on April 11, 1938. (Ex. Vol. II, 361) Mr. Baldwin relied on Mr. Johnson for information and advice concerning certain aspects of the GCL dividends. Many of the letters in the Baldwin-Safford correspondence show that they were referred by Mr. Baldwin to Mr. Johnson and bear Mr. Johnson's initials. (Ex. 124-132, R. 598, 599, 601) Mr. Johnson was also familiar with the transaction which Petitioner describes as "saddling" the New Orleans with uncollectible debts of the I-GN. (R. 697-699) Mr. Johnson, if he had been alive, would probably have been the most important witness at the trial below. He undoubtedly knew more about the transactions complained of in Objection 19 than any other man in the Missouri Pacific System. Mr. Eckert tried to substitute for Mr. Johnson as a witness. However, Mr. Eckert's memory was faulty. Moreover, Petitioner, in discussing the "saddling" transaction, makes much of the fact that Mr. Eckert testified he had not seen the Missouri Pacific book entries

pertaining to it. (Petitioner's brief, p. 17, R. 702-703) It was Mr. Johnson who determined system accounting policies. Mr. Eckert, who was in the Houston office of the New Orleans during the period in question, could not possibly supply the Missouri Pacific side of the case. Much of Petitioner's case is based on inferences which he draws from entries in the books. Mr. Johnson could have done much to explain these entries.

Mr. Frank Andrews, a member of the New Orleans board until 1929 and its general solicitor, died in December 1936. He was referred to in the testimony on several occasions as having passed on matters which have an important bearing on Objection 19. (R. 535, 605; Ex. 113, 122-124, R. 576, 583, 598; Ex. Vol. II, 362)

Mr. O. P. Van Sweringen, chairman of the boards of the Missouri Pacific and the New Orleans in 1930 and following, died in 1936. Petitioner's brief demonstrates how important his testimony would have been. (Ex. Vol. II, 360)

Mr. E. J. White, vice president and general solicitor of the Missouri Pacific, was familiar with many of the matters involved in Petitioner's Objection 19. He died on December 29, 1935. (Ex. Vol. II, 362)

Other witnesses mentioned by Mr. Railey certainly would have been called if they had been alive, and, as Mr. Railey indicated, their testimony would have been helpful to the district court in determining the issues presented by Petitioner's Objection 19. (Ex. Vol. II, 362, R. 191-207)

The Petitioner has heretofore suggested several persons who might have been called as substitutes for those who are now dead. Mr. Baldwin was called by Petitioner. It will be pointed out that Respondents did not interrogate him. His testimony clearly indicated that he was interested primarily in building a railroad and operating it. (R. 596-

608) He relied on Mr. Williams and Mr. Van Sweringen and the board of directors to supply him with the needed funds. Moreover, the trial was held in January and March 1944. It was not our wish to ask Mr. Baldwin to divert his attention from his important war job. It seems obvious that there could have been no substitutes for the deceased witnesses mentioned above. In any event the Petitioner is entitled to no presumption in his favor in this matter. The situation exists because of Petitioner's inexcusable delay.

Not all of the documentary evidence was available. Under regulations of the Commission various documents may be destroyed after the lapse of specified periods of time. Such destroyed documents contained evidence supporting the book entries. (R. 193-194, 196-197, Ex. Vol. II, 362) Petitioner does not accept the book entries at face value. He seeks to show that some of them were false.

Petitioner is in a court of equity asking for subordination, an equitable remedy. The doctrine of laches is also designed to achieve equity. A court of equity frowns upon a stale demand and, if it be coupled with change of position on the part of third parties or serious prejudice to those who must defend against such a demand, the court will leave the parties where it finds them.[1]

The doctrine of laches is applied in courts of bankruptcy.[2]

Laches may operate as a bar to the making of objections to a claim filed in bankruptcy.[3]

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[1] *Graham* v. *Boston, Hartford & Erie R. R. Co.*, 118 U. S. 161 (1886); *Moran* v. *Horsky*, 178 U. S. 205 (1900); *Barnhart* v. *Western Maryland Ry. Co.*, 128 F. 2d 709 (C.C.A. 4th, 1942), cert. den. 317 U. S. 671 (1942); *Penn Mutual Life Insurance Co.* v. *Austin*, 168 U. S. 685 (1898).

[2] *In re Trustees System Discount Co.* of Chicago, 85 F. 2d 467 (C. C. A. 7th, 1936), cert. den. 299 U. S. 599 (1936).

[3] *In re American S.S. Nav. Co.*, 14 F. Supp. 106 (D. C., E. D. Pa., 1933), aff'd *sub nom. Cooper* v. *Rauch*, 82 F. 2d 1005 (C. C. A. 3rd, 1936); *In re Nichols*, 166 Fed. 603 (D. C., N. D. N. Y., 1909).

Some of the transactions now questioned occurred over twenty-two years ago. None of them is less than fifteen years old. Petitioner's case is largely based on old records and the testimony of witnesses whose memories are dimmed by the passage of time. (R. 548, 551, 552, 576, 589, 598) It seems obvious that the proponents of the Plan were seriously prejudiced by the long and inexcusable delay in presenting Objection 19.

The following comments of the Circuit Court of Appeals for the Fourth Circuit made in 1942 aptly apply to the facts just reviewed:

> "We do not wish to be understood as holding that the mere lapse of 19 years prior to the bringing of this action is sufficient, in itself, to deny relief on the ground of laches. Our point is that, after having carefully considered the background and history of this case in all of its peculiar aspects, we feel the interests of justice would best be served by our holding that the action is barred by unreasonable delay. The many difficulties of the appellee railroad inherent in the delayed defense of this action at this turbulent period in our national existence more than outweigh the alleged equity of restitution to appellants for the alleged nefarious acts committed by appellee two decades ago. This is in accord with the firmly imbedded principle that equity will not aid a plaintiff whose unexcused delay, if the action were allowed, would be unduly prejudicial to the defendant." *Barnhart* v. *Western Maryland Ry. Co.*, 128 F. 2d 709, 715 (C. C. A. 4th, 1942); cert. den. 317 U. S. 671 (1942).

It would be difficult to imagine a state of facts that would present a stronger appeal to a court of equity for the application of the doctrine of laches than is presented here. We conclude, therefore, that Petitioner's objection was properly overruled on the ground of laches. (CL. 15, R. 33; R. IV, 20)

POINT V

The courts below properly held that the trustee in Bankruptcy of the Missouri Pacific and the Gulf Coast Lines has discharged his duty with fidelity and in conformity with the Bankruptcy Act.

Petitioner's Point IV seems to suggest that another three years should be spent delving into dusty records and trying again the issues of this case. It is apparently of no consequence to him that this would involve delay of the reorganization for several more years. No plan for these debtors can be formulated as long as there is any uncertainty concerning the intercompany claim. Although we held different views at one time (R. 722), we now believe it to be practically impossible to devise a plan with alternative allocations which would anticipate all of the possible ways in which the issues presented by this record can be disposed of.

The statements in the Petitioner's brief concerning Mr. Thompson are most unfair. These statements leave the impression that Mr. Thompson has been indifferent to the affairs of the New Orleans and that no investigation was made. The statements in their entirety misrepresent Mr. Thompson's position.

In 1934 Mr. Thompson with the acquiescence of his then co-trustee, Mr. L. W. Baldwin, retained Messrs. Price, Waterhouse & Co. to audit the books of the Missouri Pacific and the GCL. From time to time as the audit progressed he conferred with the auditors. He was advised by Price, Waterhouse & Co. after they had completed their investigation of the GCL that they found nothing questionable concerning the intercompany claim. (R. 646-648) Petitioner has heretofore taken the position that the investigation of the GCL was not a matter for auditors. However, he contends that the only matters relative to the

issues presented by Objection 19 are financial. (Petitioner's brief, pp. 24, 50) The great bulk of Petitioner's case at the trial below was the testimony and exhibits of two auditors, Mr. Delaney, a certified public accountant retained by Petitioner (R. 398-496), and Mr. Eckert, formerly the auditor of the GCL and at the time he testified the chief accounting officer of the System. (R. 496-570, 629-637, 660-711)

Mr. Thompson had retained special counsel, Judge Fred L. Williams, to review the Price, Waterhouse reports and to advise the trustee as to whether anything disclosed in the audit should be investigated further. (R. 648) In July 1935 Mr. Thompson called a conference of the interested parties. It was attended by counsel for various mortgage trustees and protective committees, including Mr. Brandwen who at that time represented a First and Refunding committee and who was Petitioner's attorney at the trial below. (R. 648-653) At this conference the work of investigation which Judge Williams had conducted was reviewed. At the conclusion of the conference Mr. Thompson requested any suggestions which counsel might have concerning other matters that ought to be investigated. No suggestions having any bearing on the matters complained of in Objection 19 were ever received by Mr. Thompson in response to this request. (R. 653)

Subsequently an order was entered authorizing examinations under Section 21a of the Bankruptcy Act, an order which Mr. Brandwen had frequently requested Mr. Thompson to obtain. No one made any suggestion that the 21a examination should be directed toward the intercompany claim. (R. 653) In 1936 Mr. Thompson filed a motion in which he reported that he had found no irregularities of the kind now complained of by Petitioner. (R. 654) Nevertheless, he suggested that the Commission be asked for information which it might have requiring further investi-

gation. The order entered upon this motion requested the Commission's suggestions. (R. 654-655) The Commission's reply contained no suggestions. (FF. 37, R. 26) Petitioner's brief does not mention the investigation by Judge Williams or the trustee's report to the court concerning irregularities. To us it is significant that after this careful investigation the trustee's report contained nothing that would give support to the subordination claims contained in Objection 19. It also refutes the statement that Mr. Thompson first announced his position at the trial below. (Petitioner's brief, p. 61)

Petitioner refers to the petitions filed in 1937 by the New Orleans first mortgage committee and the trustee of that mortgage. (R. 87, 101) These petitions show that Mr. Thompson, after investigating various matters complained of therein, made certain adjustments but refused to make others which those petitioners demanded. Yet Petitioner creates the impression that Mr. Thompson did nothing.

In addition to all this, the Commission had received voluminous evidence pertaining to the GCL, the advances and the dividends at its hearings on the first Plan of Reorganization. (R. 83, 159, 160, 208-209, 211, 20839-20843) The representatives of the New Orleans security holders had retained competent experts (R. 208-209) and were represented by able counsel at those hearings.

The record is in complete contradiction to the statements and suggestions in the Petitioner's brief that there has been an inadequate investigation of the affairs of the GCL. It is perfectly plain that Mr. Thompson's conduct in these proceedings has conformed with the highest standards of a fiduciary. Two courts, after having examined the merits of Objection 19, have said so. (FF. 45, R. 29; CL. 17, R. 33; R. IV, 27)

None of the decisions upon which Petitioner relies in Point IV of his brief is in point. (Petitioner's brief, pp. 58-59) They deal with a situation quite different from a trusteeship under Section 77. It has been the practice in proceedings under Section 77 to appoint a common trustee or trustees for all of the debtors within a single system. This practice is contemplated by the provisions of Section 77(a) which authorizes subsidiaries to file petitions in proceedings involving the parent. This practice is in the public interest. It facilitates the continued operation of a railroad system as an integrated unit. To have separate trustees for the New Orleans and Missouri Pacific, each competing with the other as to traffic and other matters, could result in serious consequences. Its effect on both public and private rights cannot be estimated. Certainly no such far-reaching decision ought to be made on the basis of the record now under review. An effort similar to Petitioner's was made in the *Rock Island* reorganization. There the same trustees were appointed for each of the debtors in the Rock Island system. These trustees declined to affirm a lease of property of one of the subsidiaries (Rock Island, Arkansas and Louisiana Railway Co., referred to as "Rial") to the parent and refused to pay rents under the lease. Bondholders of the subsidiary asked the court to remove the trustees on the ground of conflicting interests. In affirming the order denying the motion to remove, the Circuit Court of Appeals for the Seventh Circuit stated:

> "It is further contended by appellants that there is such a conflict of interest here presented as to preclude the trustees of the principal debtor from fairly representing Rial, and that the District Court should have removed them and should have appointed another trustee or trustees for Rial. It is quite true that a case of this character always involves many conflicting interests. Similar conditions nearly al-

> ways arise in equity receiverships. But that fact alone has seldom, if ever, been used as a reason for appointing more than one set of trustees. If appellants' contention in this respect were permitted with respect to all of the subsidiaries, it would be most difficult indeed to make any progress whatever in accomplishing the thing which Congress obviously intended." *In re Chicago, R. I. & P. Ry. Co.*, 110 F. 2d 395, 401. (C. C. A. 7th, 1940)

If a court is capable of dealing impartially with the affairs of several debtors, there appears to be no reason why the court's officer, a trustee in bankruptcy, who has no personal interest in any of their affairs, is not also capable of acting with complete impartiality. The record is convincing proof that Mr. Thompson has done so in this case. The courts below so determined. (FF. 45, R. 29; CL. 17, R. 33; R. IV, 27)

POINT VI

The decision below should be sustained on the ground that the order of the District Court approving the 1940 Plan was final and conclusive as to the validity and priority of the intercompany claim.

In Point IV *supra* we reviewed the history of these proceedings. There it was noted that in the Section 77(d) and (e) proceedings before the Commission and the district court, which resulted in approval of the 1940 Plan by the district court, there was not so much as a suggestion that anything was wrong with the intercompany claim. (R. 20839-20840) The Commission's report on the 1940 Plan indicated clearly that the allocations of new securities to the Secured Serial bondholders and the New Orleans Common stockholders were based on the conclusion that

the intercompany claim was valid and ranked in priority to the New Orleans Common Stock.[1]

All interested parties were duly notified of and given an opportunity to participate in the proceedings which resulted in approval of the 1940 Plan by the district court. In these circumstances the district court's order of approval was final and conclusive as to all issues of law and fact which could have been, but were not, raised in those proceedings.[2] The petitioner and other Secured Serial bondholders having failed to urge invalidity or subordination of the intercompany claim and to present supporting proof were, as to such matters, bound by the district court's order approving the 1940 Plan.

It is immaterial that appeals from the approval order were remanded without passing on the merits of the appeals and that the district court, as permitted by Section 77(e),[3] returned the 1940 Plan to the Commission for further proceedings in accordance with Section 77(d). (R. 122) The opinion and order of the district court returning the proceedings to the Commission clearly indicate that the 1940 Plan failed of confirmation because of changed con-

---

[1] Missouri Pacific R. R. Reorganization, 239 ICC 7, 129-130 (1940).

[2] *Grubb* v. *Public Utilities Commission*, 281 U. S. 470, 478-479 (1930); *Chicot County Dist.* v. *Bank*, 308 U. S. 371 (1940); *Stoll* v. *Gottlieb*, 305 U. S. 165 (1938).

[3] Section 77(e) provides in part:

> "• • • If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons therefor, and enter an order in which he shall either dismiss the proceedings, or, in his discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings, including the consideration of modifications of the plan or the proposal of new plans. In the event of such a reference back to the Commission, the proceedings with respect to any modified or new plan shall be governed by the provisions of this section in like manner as in an original proceeding hereunder."

ditions and the lack of certain findings not related to th intercompany claim. (R. 124-139) It was not the purpos of Section 77, in permitting plans of reorganization to b returned to the Commission for further proceedings, t afford parties a second opportunity to try issues whic through lack of diligence they failed to present to th Commission at the prior hearings on the plan. The Peti tioner suggests no reason why he or his predecessors i interest did not present their objections to the intercom pany claim and supporting proof prior to the time whe the district court approved the 1940 Plan. They had seve years in which to do so—1933-1940. The basic facts wer all available prior to the date of the approval order an most of them were a matter of public record. (See pp 65-67, *supra*) Thus, in the further proceedings on the pla the Petitioner had no right to present evidence or be hear on any issue pertaining to the validity or priority of th intercompany claim. That issue had been disposed of b the order approving the 1940 Plan. The Commission un doubtedly had these considerations in mind when it state in its report approving the 1944 Plan:

> "• • • Although more than 12 years hav elapsed since the Missouri Pacific made its advance of cash to the New Orleans, as above stated, th invalidity of any part of these advances has neve been established and we will assume for the pur poses of this proceeding that they are valid obliga tions of the New Orleans in determining the righ of, and extent to which, holders of Missouri Pacifi 5¼-percent bonds and the New Orleans stockholder should participate in the plan of reorganization." (R. 20842, see also R. 20837-20842, 154, 161)

These conclusions are not founded upon mere techni calities. They are supported by the necessity for an orderl and expeditious procedure in the disposition of railroa

reorganizations. There is an important public interest in these reorganizations. One of the chief reasons for the enactment of Section 77 was to do away with the delays of the equity receivership procedure. This Court has stated that the parties are bound to exercise the highest degree of diligence in expediting the reorganization proceedings and that it is the duty of the courts and the Commission to see that they do.[1]

Section 57k of the Bankruptcy Act[2] is inapplicable to the situation presented by this record. That section will not be applied if to do so would thwart one of the underlying purposes of Section 77, namely, the reorganization of carriers as expeditiously as is consistent with giving all interested parties an adequate opportunity to be heard.[3]

Unless the courts insist on some reasonable adherence to an orderly and expeditious procedure, one of the important purposes sought to be achieved by the enactment of Section 77 will have failed.

The conduct of Petitioner in these proceedings is a striking example of the effect of dilatory conduct. Petitioner's first statement of his objections to the intercompany claim was made at the Commission's second hearings in October 1943. As already noted, he did not come pre-

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[1] *Continental Illinois National Bank & Trust Co.* v. *Chicago, R. I. & Pac. Ry. Co.*, 294 U. S. 648, 685 (1935). See also *Group, etc.* v. *Chicago, Milwaukee, St. P. & P. R. R. Co.*, 318 U.S. 523, 545 (1943).

[2] "§57k. Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part according to the equities of the case, before but not after the estate has been closed." 11 USCA §93k.

[3] "§77(1). In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

pared to present substantial proof in support of his objections. (R. 141-165) The subsequent attempts to obtain a hearing on the intercompany claim in the district court after approval of a revised plan by the Commission, if successful, would have delayed the proceedings further. (R. 166, 247) At the hearings in the district court on the plan in January and March 1944, most of the time was occupied with Petitioner's Objection 19. The voluminous and complicated record made at that hearing undoubtedly explains to a large extent the reason why the district court required almost a year to decide the issues. It was not until January 22, 1945 that the orders approving the plan and overruling Objection 19 were entered. By the time Petitioner's four appeals had been decided by the court below—almost four years after close of the Commission's second hearings—the 1944 Plan was obsolete. Accordingly, at the suggestion of the Commission the court below remanded the proceedings for the preparation of a third plan of reorganization. (See p. 3, *supra*) Even now the pendency of this cause will probably require the Commission to delay its approval of the third plan of reorganization until this Court finally determines the issues.

This is not all. At the Commission's second hearings in October 1943, Petitioner for the first time raised another issue involving subordination. (R. 154; see also his Objections 20-23, inclusive R. 233) At the hearings on the 1944 Plan the district court ordered these issues segregated for separate trial. (R. 736-737, 776) To date the Petitioner has not brought these issues on for trial. Unless this Court clearly indicates its disapproval of such dilatory conduct, Petitioner may be expected to urge the same or some other objections in the further proceedings before the Commission which are now scheduled to commence on March 23, 1948. If the pattern of the instant case be followed, the issues thus raised are likely to be presented to

this Court for determination four years hence. Meanwhile holders of millions of dollars of securities of the Missouri Pacific System may be required to stand by, deprived of the income on their new securities and the benefits of a management unhampered by the burdensome restrictions that the bankruptcy proceedings of necessity impose.

Certainly it was not the intention of Congress that the federal bankruptcy courts should be used as a means of hindering and delaying creditors in any such manner as is disclosed by the record under review. Petitioner's conduct in these proceedings has been in complete disregard of the interest of the public which this great railroad system serves and of creditors of the system who throughout the 77 proceedings have been stayed from enforcing their legal rights. The instant case affords this Court a most suitable opportunity to restrain parties whose dilatory conduct has contributed substantially to the extension of these proceedings over a period of almost fifteen years and to put real meaning into the words of the *Rock Island* and *Milwaukee* decisions.

No injustice will be done to the Petitioner in denying the relief which he requests. He and all other Secured Serial bondholders were given a full opportunity to present their objections to the intercompany claim. Fairness and justice do not require more than this.

CONCLUSION.

The Petition should be dismissed or the order of the Court below should be affirmed.

Respectfully submitted,

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Dated: February 28, 1948.

APPENDIX I

Excerpts from Section 77

(d) . . . After the filing of such a plan, the Commission, unless such plan shall be considered by it to be prima facie impracticable, shall, after due notice to all stockholders and creditors given in such manner as it shall determine, hold public hearings, at which opportunity shall be given to any interested party to be heard, and following which the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subsections (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

The Commission may thereafter, upon petition for good cause shown filed within sixty days of the date of its order, and upon further hearings if the Commission shall deem necessary, in a supplemental report and order modify any plan which it has approved, stating the reasons for such modification. The Commission, if it approves a plan, shall thereupon certify the plan to the court together with a transcript of the proceedings before it and a copy of the report and order approving the plan. No plan shall be approved or confirmed by the judge in any proceeding under this section unless the plan shall first have been approved by the Commission and certified to the court.

(e) Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice,

detailed and specific objections in writing to the plan and their claims for equitable treatment. The judge shall, after notice in such manner as he may determine to the debtor, its trustee or trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of subsection (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders . . .

. . . If the judge shall confirm the plan, he shall enter an order and file an opinion with a statement of his conclusions and his reasons therefor. If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons therefor, and enter an order in which he shall either dismiss the proceedings, or, in his discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings, including the consideration of modifications of the plan or the proposal of new plans. In the event of such a reference back to the Commission, the proceedings with respect to any modified or new plan shall be governed by the provisions of this section in like manner as in an original proceeding hereunder.

If it shall be necesary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the court in its report on the plan. The value of any property used in railroad operation shall be determined on a basis

which will give due consideration to the earning power of the property, past, present, and prospective, and all other relevant facts. In determining such value only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, as may be required under the law of the land, in light of its earning power and all other relevant facts. . . .

APPENDIX II

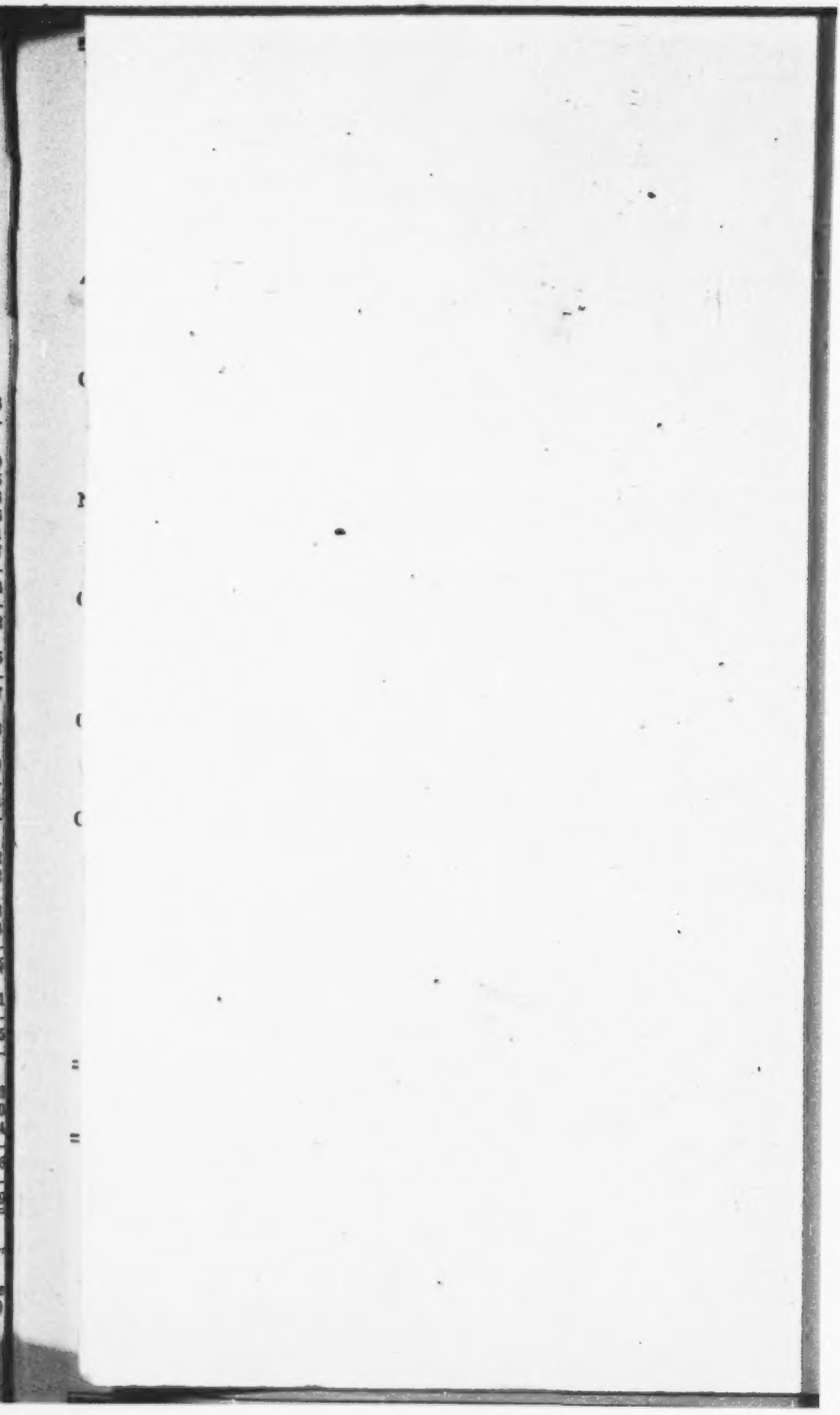
GULF COAST LINES

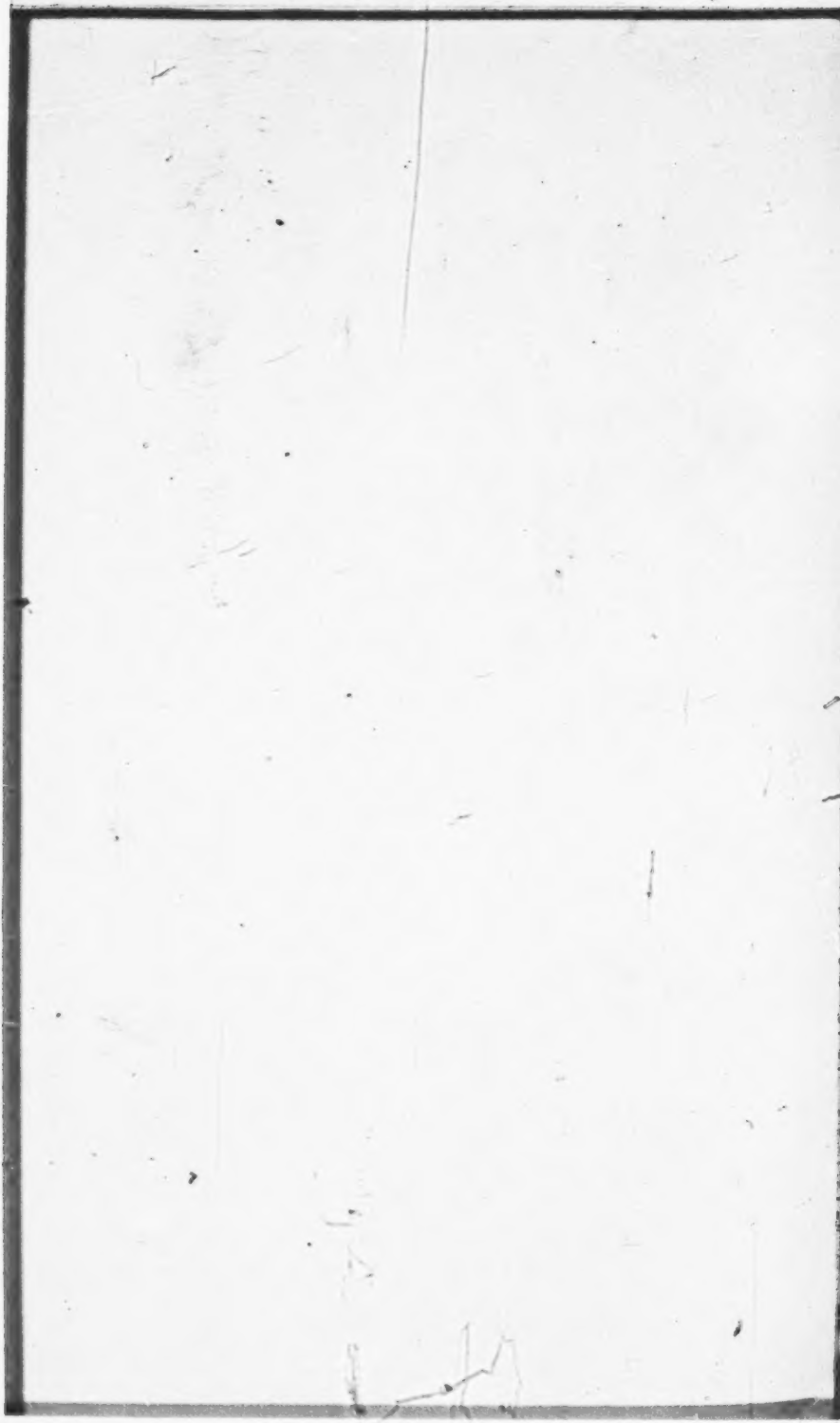
CONDENSED INCOME ACCOUNT
1944 - 1947

	1944	1945	1946	1947
Railway Operating Revenues	$47,752,223	$41,299,895	$36,908,802	$40,357,4
Railway Operating Expenses:				
Maintenance of Way and Structures	$ 7,562,741	$ 7,464,953	$ 6,782,237	$ 7,287,4
Maintenance of Equipment	4,380,404	6,022,240	4,322,004	4,778,2
Traffic	663,450	693,086	799,464	846,8
Transportation	11,351,989	11,203,429	12,324,792	13,458,2
Miscellaneous Operations	181,783	151,437	112,154	110,6
General	903,658	907,751	1,077,236	1,230,5
Total Railway Operating Expense	$25,044,025	$26,442,896	$25,417,887	$27,811,3
Net Revenue from Railway Operations	$22,708,198	$14,856,999	$11,490,915	$12,545,5
Railway Tax Accruals	12,598,920	7,575,147	2,477,989	2,999,3
Railway Operating Income	$10,109,278	$ 7,281,852	$ 9,012,926	$ 9,546,1
Rent Income	551,459	590,667	545,187	398,1
Rents Payable	4,069,149	3,851,420	3,601,326	3,648,9
Net Railway Operating Income	$ 6,591,588	$ 4,021,099	$ 5,956,787	$ 6,295,3
Non-Operating Income:				
Dividend Income	$ 3	$	$	$ 8
Income from Funded Securities	3,015	2,315	5,950	3,5
Income from Unfunded Securities and Accounts	188,306	200,117	222,644	110,8
Other	116,420	Dr. 6,895	94,100	184,0
Total	$ 307,744	$ 195,537	$ 322,694	$ 299,2
Miscellaneous Deductions from Income	54,099	122,212	70,241	72,1
Income Available for Fixed Charges	$ 6,845,233	$ 4,094,424	$ 6,209,240	$ 6,522,4
Fixed Charges:				
Rent for Leased Road and Equipment	$ 2,974	$ 1,212	$ 2,605	$ 1,4
Interest on Funded Debt*	2,783,698	2,780,938	2,780,938	2,780,9
Interest on Unfunded Debt	4,312	85,700	25,902	10,5
Total Fixed Charges	$ 2,790,984	$ 2,867,850	$ 2,809,445	$ 2,792,9
Net Income	$ 4,054,249	$ 1,226,574	$ 3,399,795	$ 3,729,5

Source: Company Records—Office of Chief Acctg. and Financial Officer, St. Louis, Mo
January 29, 1948.

* Includes $117,705 annual fixed interest on $2,354,100 principal amount of First Mortgag
5% Income Bonds due 1935, which were retired on December 1, 1947. (D.C. Rec. 2557
This footnote added by Respondents.





FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

Nos. 451-454

MAR 1 1

No. 451

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000 principal amount of said bonds,

Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, *et al.*,

Respondents.

No. 452

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and others, etc.,

Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, *et al.*,

Respondents.

No. 453

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and others, etc.,

Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, *et al.*,

Respondents.

No. 454

ANDREW W. COMSTOCK,

Petitioner,

v.

GUY A. THOMPSON, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, *et al.*,

Respondents.

MOTION AND BRIEF OF CONVERTIBLE BONDHOLDERS GROUP, RESPONDENTS

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Dated, February 28, 1948.

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Abbreviations Used In This Brief

International Great Northern—IGN

Interstate Commerce Commission—"ICC" or "Commission"

Missouri Pacific R. R. Co., principal debtor, herein—MOP

New Orleans, Texas and Mexico Railway Company—NOTM

Reconstruction Finance Corporation—RFC

Railroad Credit Corporation—RCC

Record on Appeal, Volume IV—R, IV.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

NOS. 451-454

No. 451

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $200,000 principal amount of said bonds,

Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, *et al.*,

Respondents.

No. 452

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and others, etc.,

Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, *et al.*,

Respondents.

No. 453

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and others, etc.,

Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, *et al.*,

Respondents.

No. 454

ANDREW W. COMSTOCK,

Petitioner,

v.

GUY A. THOMPSON, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, *et al.*,

Respondents.

MOTION TO DISMISS APPEALS

PLEASE TAKE NOTICE that the undersigned will move this Court on March 8th, 1948 at the Courthouse thereof upon the opening of argument of these appeals for an order dismissing said appeals pursuant to Rule 7 of the Rules of this Court, on the following grounds:

1. That Andrew Comstock, petitioner, a bondholder of Missouri Pacific R. R. Co. has no legal capacity to appeal "on behalf of himself and others" alleged holders of 5¼% Secured Serial Gold bonds; (Appeal No. 451), nor in behalf of NOTM (Appeal No. 452).

2. That Andrew Comstock, petitioner, has no legal standing or right to appeal in the name of Guy A. Thompson as Trustee of NOTM; (Appeal No. 453).

3. That Andrew Comstock, petitioner, is not an aggrieved party (Appeal No. 454).

In support of said motion, the annexed statement will be submitted to the Court.

Dated, New York, N. Y., February 28, 1948.

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To:

CLERK, U. S. SUPREME COURT,
Washington, D. C.

WILLIAM H. BIGGS,
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Statement in Support of Motion to Dismiss Appeals

This statement is submitted to this honorable Court in support of the motion by Convertible Bondholders Group, Respondents, to dismiss these appeals pursuant to Rule 7 of the Rules of this Court.

The four self-serving captions of these appeals (Nos. 451, 452, 453, and 454) used or adopted herein by counsel for petitioners do not *ipso facto* adjudge Comstock's right to use these imposing titles.

As to Appeals Nos. 451 and 452

As to appeals taken by the petitioner, Andrew Comstock allegedly "on behalf of himself and others holding upwards of $900,000. principal amount of said (5¼%) *bonds"* (*Appeal No. 451*).

The petitioner has no right to represent any group of persons in this proceeding or upon this appeal except pursuant to subsection (p) of Section 77 of the Bankruptcy Act after permission is granted by the I. C. C.

Permission to intervene personally in the reorganization proceeding was granted to petitioner Andrew Comstock by the I. C. C. but denied as to "others holding upwards of $900,000. principal amount of said (5¼%) bonds".

Furthermore the petitioner Andrew Comstock has been given no authority by law, or by the District Court, and he, therefore, has no right, to appeal in the self-styled caption used in Appeal No. 451.

Petitioner has also brought an appeal (No. 452) in the name of NOTM. Petitioner is an alleged creditor of MOP, and he or the "others" have presumably accepted interest on the 5¼% bonds from MOP since the issuance of said bonds and ratified and approved

MOP's alleged management of NOTM. He is, if anything, a creditor of MOP and not of NOTM. Hence he has no standing in Court to sue in the name of NOTM.

These appeals should be dismissed.

As to Appeal No. 453

As to appeals taken by petitioner, Andrew W. Comstock allegedly on behalf of Guy A. Thompson, Trustee of NOTM.

In this self-styled caption, as well as in Appeals Nos. 451 and 452, petitioner Comstock asserts he represents holders of MOP's 5¼% Secured Serial Gold Bonds.

As pointed out above, petitioner Comstock has no legal capacity to appeal in behalf of NOTM or on behalf of other holders of MOP's 5¼% Secured Serial Gold Bonds.

The I. C. C. denied Comstock the right which he appropriated to represent other holders of 5¼% Secured Serial Gold Bonds and no appeal from the adverse ruling and order of the I. C. C. has been taken to the District Court or to the United States Circuit Court of Appeals, and the time to do so has expired.

Petitioner by the same token has no authority in law, from the District Court, or from the Trustee, Guy A. Thompson, to adopt the title used in this appeal, and he, therefore, has no right to appeal on behalf of "Guy A. Thompson, Trustee of the NOTM".

Moreover, there never was any question about the propriety of Guy A. Thompson acting as Trustee of NOTM and MOP. He was appointed as such Trustee by an order of the District Court from which no appeal was taken by petitioners. The order of his appoint-

ment has not been rescinded, nor was Mr. Thompson requested by bona fide NOTM creditors or stockholders to resign from NOTM trusteeship because of prejudice or inconsistent or divergent interests. The claims alleged by Comstock are simply matters of bookkeeping, accounting and administration of the MOP properties, in which Comstock has no interest as a matter of law.

Regardless of Comstock's designation of the title of these appeals, he represents only himself (See R. IV, p. 31).

The Trustee of MOP however, represents all creditors.

In re Lewensohn (C. C. A. 2d Circ.), 121 Fed. R. 538, certiorari denied 189 U. S. 513, at page 539 of the Reporter, the Court said:

> "The trustee represents every creditor. The orderly conduct of the administration requires that a proceeding for the re-examination of the claim should be taken in the interests of all the creditors and not be permitted at the instance of any one creditor unless demanded by the interests of all. If the trustee should, without sufficient reason, refuse to proceed, the Court, by its order, could compel him to do so or remove him for disobedience."

The Court said further on page 540:

> "We cannot believe it was within its intention (referring to general order 21 Cl. 6, 32 C. C. A. XXIII, 89 Fed. X) to permit the trustee and creditors concurrently to pursue a re-examination of a claim, or to permit a creditor to do so when the trustee, for sufficient reason, does not approve, or when, in the interests of all it is desirable that the trustee should conduct the proceeding."

To the same effect and citing many authorities is Maryland Casualty Co. v. Freeman, 71 Fed. (2d) 1011.

In the case of Fred Reuping Leather Co. v. Fort Greene Nat. Bank of Brooklyn, N. Y.; In re Honesdale Union Stamp Shoe Co., Inc., Circuit Court of Appeals, 3d Circuit (1939), 102 Fed. (2d) 372, at page 372, the Circuit Court said:

> "• • • the trustee represents all the creditors and may therefore be relied upon to press all proper objections to the claims of those whose standing is questionable. If he defaults in his duty the court may upon application direct him in his duty or, if he be recalcitrant, remove him for disobedience, or permit a creditor to act in his name. To allow any creditor, without such leave, to institute proceedings to reject the claims of other creditors, will not, as Judge Wallace pointed out in Re Lewensohn, supra, 121 F. 539, 'subserve any necessary purpose, and open the door to grave abuse. It enables one creditor at his own pleasure to subject any one of the other creditors, or all the other creditors, to the inconvenience and expense of unnecessary litigation, and to unduly protract the settlement of the estate. It is not allowed, in terms, by any provision of the bankrupt act.' 'Furthermore', as Judge Thayer said in Chatfield v. O'Dwyer, supra, 101 F. page 709, *'if one creditor of a bankrupt may prosecute an appeal under section 25 of the bankrupt law* (11 U. S. C. A. par. 48), *from the allowance of a claim, then any other creditor may take a like appeal upon the same or different grounds, and this court may be required to entertain a number of appeals, all of which are brought to test the validity of the same demand'."* (Italics ours.)

These are the same cases relied on by Comstock in the District Court (D. C. Brief, pp. 65-66).

It follows that the order of the District Court and of the United States Circuit Court of Appeals, 8th Circuit, was right.

Petitioner Comstock has no legal standing or right to appeal in the name of Guy A. Thompson as Trustee of NOTM. To hold otherwise is to license every creditor in this proceeding to test the validity of any claim real or imaginary before the reorganization Court. No plan of reorganization could ever be concluded in such event. The Trustee alone represents all creditors.

These appeals must, therefore, be dismissed.

As to Appeal No. 454

As to appeal taken by the petitioner Andrew W. Comstock in his own name.

Comstock's appeal in his own name as a creditor holding 5¼% Secured Serial Bonds of MOP, the principal debtor, has no superior standing to that of any other 5¼% Secured Serial bondholder and his claim cannot be singled out from those claims, if any, which other 5¼% bondholders have as a class.

Comstock may speak only for himself on this appeal. But to do so he must show that he is a bona fide bondholder of said bonds in due course, before maturity and for value and without knowledge of any infirmity in the Secured Serial bonds. This he cannot demonstrate. On the contrary, it has been established that he was aware of the infirmities, if any, which he alleges are inherent in this bond issue and nevertheless purchased these bonds in 1940 after default in the payment of interest thereon (See R. IV, p. 20).

Petitioner Comstock does not claim he purchased these bonds before default in the payment of interest thereon, for were he to do so, he would be bound to a ratification

of all the acts of overreaching claimed to have been perpetrated by MOP, since the funds so obtained by MOP were concededly used for the specific purpose of meeting MOP's system obligations and dividends.

This honorable Court should not take jurisdiction it is respectfully submitted, to hear petitioner Comstock, on an individual complaint, i. e., his Objections "Numbered 19 and related objections" to the 1940 approved plan of reorganization, on an intercompany claim because the same is now moot. There is no approved plan of reorganization and this objection may never again arise if for one reason or another a final plan of reorganization is not adopted, or if as is claimed by this petitioner NOTM is declared to be solvent.

Therefore, this petitioner is not now an aggrieved party as there is no final determination or adjudication of the treatment of his bonds by an adopted or approved plan of reorganization.

Moreover, should this honorable Court set the precedent of permitting an individual bondholder of a principal Debtor to appeal from an interlocutory order of the District Court or of the I. C. C., other bondholders and claimants may swamp the Courts with other demands to test the validity of their particular claims upon intercompany matters.

Finally, there is not a scintilla of evidence in the record by Comstock to show that he is a bona fide bondholder or that he has suffered any damages as a result of his purchase of MOP 5¼% serial bonds.

The contrary is the admitted fact as the record will disclose. Comstock became a bondholder of MOP in 1940, years after the commencement of this proceeding in 1933 by buying bonds at ten cents on the dollar (R. IV p. 20).

These bonds have since been selling in the open market at or close to par. They are now selling for far more than Comstock paid for them.

The several appeals taken by Comstock must therefore be dismissed.

Dated, February 28, 1948.

Respectfully submitted,

HARRY KIRSHBAUM,
Counsel for Convertible Bondholders Group, Respondents.

EDWIN J. BEAN,
of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

Nos. 451-454

No. 451

ANDREW W. COMSTOCK, a holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, on behalf of himself and others holding upward of $900,000 principal amount of said bonds,

Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, *et al.*,

Respondents.

No. 452

NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY, Debtor, by ANDREW W. COMSTOCK, representing himself and others, etc.,

Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, *et al.*,

Respondents.

No. 453

GUY A. THOMPSON, Trustee of the New Orleans, Texas and Mexico Railway Company, by ANDREW W. COMSTOCK, representing himself and others, etc.,

Petitioner,

v.

GROUP OF INSTITUTIONAL INVESTORS, holding First and Refunding Mortgage 5% Gold Bonds of Missouri Pacific Railroad Company, *et al.*,

Respondents.

No. 454

ANDREW W. COMSTOCK,

Petitioner,

v.

GUY A. THOMPSON, Trustee of New Orleans, Texas and Mexico Railway Company, Debtor, *et al.*,

Respondents.

BRIEF OF CONVERTIBLE BONDHOLDERS, RESPONDENTS

Introductory Statement

This brief is filed with this Court on behalf of the Convertible Bondholders Group, Respondents, constituting 21 individual owners and holders of the 5½% Convertible Gold Bonds of the principal Debtor, Missouri Pacific Railroad Company, parties and the original representatives of this class of security to participate in this proceeding. Authority to intervene was given by order of the I. C. C. pursuant to subsection (p) of Section 77 of the Bankruptcy Act.

The 5½% Convertible Gold Bonds hereinafter referred to as Convertible bonds, constitute a $45,493,000 issue of the principal Debtor sold to the public in May 1929 and secured by the entire equity of the principal Debtor, MOP.

As of January 1, 1948, these bonds with accrued and unpaid interest represented a claim against the Debtor estate of $83,441,744, the second largest creditor claim in this proceeding.

The Convertible Bondholders Group, Respondents, have no other security interests in this proceeding and own no other securities of the principal Debtor.

Comstock, petitioner* herein, holds some MOP 5¼% serial bonds and hence represents only himself, in this proceeding, as we have shown in the forepart of this brief in the Statement in Support of Motion to Dismiss these Appeals *supra*, pages 3 to 9. He is nevertheless endeavoring by this appeal to subordinate the MOP claims against NOTM properties to the entire $13,156,000 issue of 5¼% serial bonds.

NOTM Mortgage and Income Bondholders Committee are respondents herein. Insofar as the Institutional Group

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* Petitioner Comstock claims to be the holder of $80,000 principal amount of such bonds (Petitioner's brief, p. 2, footnote).

of First and Refunding Bondholders of MOP are concerned, they are also respondents herein. It is clear that their interest is in behalf of consummating a plan of reorganization without injury to their priority. Convertible Bondholders Group, respondents herein, generally support the views of the Institutional Group of First and Refunding Bondholders, respondents herein, upon this appeal and as set forth in the Motion to Dismiss. Respondents maintain that Comstock's objections,* if valid, must be subordinated to the Convertible Bondholders' claims.

At no time have the Convertible Bondholders Group, respondents, had any connection with the management of MOP, the principal Debtor or any subsidiary thereof. It is important to call this fact to the attention of this Court for the treatment to be accorded to the bona fide Convertible Bondholder's claims under any approved plan of reorganization may be innocently but materially affected by a reversal of the order appealed from.

As the original and only independent representative Group of Convertible Bondholders in this proceeding directly concerned, a reply to the Comstock brief is therefore here independently required to be made on behalf of the Convertible Bondholders, respondents herein, to the end that the orders of the District Court and of the United States Circuit Court of Appeals 8th Circuit be affirmed.

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* The designation "Comstock claims" or "Comstock objectants", etc., refers to petitioners herein.

Jurisdiction

Jurisdiction of this Court is invoked by petitioners under Section 240 (a) of the Judicial Code, as amended, but it is respectfully submitted by these respondents that jurisdiction of this honorable Court is lacking.

The date of the unanimous opinion, order and judgment of the United States Circuit Court of Appeals for the Eighth Circuit affirming the order and judgment of the District Court was August 28, 1947. Petition for certiorari was granted by this Court on January 12, 1948.

Opinions Below

The opinion of the District Court is reported in 64 F. Supp. 64. The opinion of the U. S. Circuit Court of Appeals for the Eighth Circuit unanimously affirming the order and decree of the District Court is reported in 163 F. (2d) 350; also see R. IV pp. 13-27.

Statement of the Case

The principal Debtor, MOP, acquired the controlling interest in the capital stock of the New Orleans, Texas and Mexico Railway Company, NOTM, at the end of 1924 and at the times relevant here owned from 58 to 93 percent of the total $15,000,000 par value of such stock and from January 1925 until simultaneous commencement of reorganization proceedings in bankruptcy of both corporations in 1933, the affairs of MOP and NOTM were managed by the same officers. See transcript of proceedings in the U. S. Circuit Court of Appeals for the Eighth Circuit Volume IV page 15 referred to herein as "R. IV p. ".

It appears that thereafter and in 1926, MOP issued and caused to be sold to the public the 5¼% Secured Serial

Bonds in the amount of $13,156,000 of the kind allegedly held by petitioner Comstock. The security behind the 5¼% Serial Bonds is the pledge of the capital stock of NOTM in the same face amount as the face amount of such bonds, (R. IV p. 17). Appellant was not at that time or since, a holder or owner of NOTM stock.

On May 1, 1929, MOP issued and caused to be sold to the public the 5½% Convertible Gold Bonds Series A, in the amount of $46,392,000 to become due on May 1, 1949 of the kind held by Convertible Bondholders Group, Respondents herein. $45,493,000 in amount of said bonds were issued and are outstanding in the hands of the public. These Convertible bonds are a direct obligation of MOP. However, the Convertible bonds were issued by MOP to pay off $30,551,000 outstanding St. Louis, Iron Mountain and Southern Railway Company River & Gulf Divisions unifying and refunding mortgage 4% Gold Bonds which matured July 1, 1929 and to reimburse the treasury for capital expenditures theretofore made. (Report of Bureau of Valuation of I. C. C. filed by direction of I. C. C. Division 4, pursuant to order of the Commission entered January 19, 1948 and paragraph 11, of subsection (c) of Section 77 of the Bankruptcy Act of the United States, as amended, and forming part of the record before this Court pursuant to said order and the provisions of law). The security behind the Convertible Bonds in this proceeding if equitably considered is therefore definitely a superior and prior lien to that of the 5¼% Secured Serial Bonds. The 5½% Convertible Gold Bonds are also the direct obligation of MOP and hence are necessarily secured not by the capital stock of any *subsidiary* but by all the capital stock of the *principal* debtor MOP.

Petitioner Comstock who became a MOP bondholder after 1936 filed his objections to the then approved (1940) plan of reorganization for the principal Debtor MOP for the first time on November 22, 1944. The objection was to the allowance on August 28, 1933 of a MOP claim against

the NOTM properties in the amount of $10,565,226.78. Certain of his objections in support of disallowing said MOP claim contained charges of mismanagement of the Missouri Pacific to his detriment as a creditor of MOP, but the separately numbered objections related to wrongs which he alleges were done by the Missouri Pacific to NOTM to the detriment of his interest in the stock of the subsidiary NOTM (R. IV p. 17). In 1935, the MOP claim was upon request re-examined and approved by the District Court.

The Nature of Comstock Objection No. 19 and Related Objections

At this point, it is pertinent to remind this Court that the order of the reorganization Court approving the 1940 plan of reorganization was reversed by the order of the U. S. Circuit Court of Appeals, 8th Circuit, by order made and entered September 9, 1947 and the proceeding to formulate a new plan of reorganization or to revise the 1940 plan of reorganization was, for reasons appearing in said order (*not* including Comstock's objections to the plan No. 19 and related objections) referred back to the I. C. C. which has set public hearings to formulate and adopt a new or revised plan of reorganization for MOP. Comstock's attorneys consented in open Court to the making and entry of said order. Hearings on a plan are now scheduled for March 23rd 1948.

Hence Comstock's objections to the old plan "Numbered 19 and related objections" which are urged here on appeal have become and now are academic and moot.

When and if a new plan is adopted, petitioner Comstock, may find his objections have been obviated, for if all the creditors' claims of MOP of principal and interest are fully compensated under a new plan of reorganization, Comstock surely can have no complaint. Much of MOP's bonded

indebtedness has been paid off and a considerable amount is current.* At present as the proceeding now stands Comstock cannot claim to be an objectant or an aggrieved creditor.

Comstock's objection "Numbered 19 and related objections" charged that during the period when the affairs of

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* Since the issuance by the Commission of its last report and order, the District Court has authorized other cash payments on the principal of certain obligations of the Debtor. These may be tabulated thus:

Claims Paid	*Amount of Claim Paid*
R. F. C. claim	$23,134,800.
Bank Debt	5,850,000.
R. C. C. claim	2,487,000.
St. Louis, Iron Mountain and Southern Railway Company, River & Gulf bonds	13,803,200.
Secured serial 5¼% bonds	895,000.
Boonville, St. Louis & Southern bonds	210,500.
NOTM 5% income bonds	2,354,000.
Total	$48,734,500.

Besides the foregoing, the District Court also authorized and the Trustee has paid off $19,093,665 in interest on three bond issues:

$11,159,525 on MOP first and refunding bonds for the Sept. 1, 1939 and March 1, 1940 coupons,

6,324,140 on first mortgage and NOTM income bonds, for the period to October 1, 1947,

1,610,000 on first mortgage bonds of the International Great Northern RR (IGN) for the year 1939 to 1940.

$19,093,665 total.

"Extensive expenditures have also been made for improvement of the property * * * these problems arising out of the substantial changes in conditions since the approval of the plan justify its further review * * * the Commission is of opinion that the present plan should be returned to it for reconsideration and revision, and it so recommends." Quoted from I. C. C. brief, filed in the U. S. Circuit Court of Appeals, 8th Circuit, about August 28, 1947. On September 9, 1947, the Circuit Court entered an order vacating the District Court order approving the plan and referred the matter back to the I. C. C. Hearings are now scheduled for March 23, 1948, to adopt a plan of reorganization.

NOTM were controlled by MOP, that is between the end of 1924 and the bankruptcy in 1933, the Missouri Pacific management caused its subsidiary NOTM to pay to it dividends illegally out of capital and to improvidently declare and pay dividends unjustified by the business and conditions of NOTM (R. IV pp. 17-18).

A $200,000,000 expansion program was carried on by MOP for its properties including its NOTM properties (R. IV, p. 26). $10,355,226.78 of advances made by MOP for NOTM developments remained unpaid and thus NOTM notes in the sum of $9,955,226.78 evidencing the advances were credited to MOP.

At the time of the commencement of this proceeding the notes evidencing advances to NOTM for such purposes aggregated $10,355,226.78. This indebtedness was reported to the I. C. C. and deemed valid by it. Under authorization of the I. C. C. granted after hearing, MOP pledged two of the notes aggregating $9,955,226.78 as security for loans made to it by the Reconstruction Finance Corporation. An additional pledge was made to Railroad Credit Corporation (R. IV, p. 16). The RFC and RCC claims have since been paid from earnings of the entire Debtor's estate, without objection from Comstock, and the order authorizing payment by the Trustee subrogated the First and Refunding Mortgage bondholders and other MOP creditors including 5¼% Serial bonds held by Comstock, to the extent of their interest (R. 1188, Ex. 335-357), to the lien of the RFC and the RCC on the pledged collateral, including the pledged portion of the intercompany claim (R. 1157 and 1165).

Thus a determination in favor of Comstock, by this honorable Court of the questions presented will not result in a reversal of the order, overruling petitioner Comstock's Objection 19, since petitioner Comstock concedes that the RFC and RCC collateral notes of $9,955,226.78 of the total $10,355,226.78 in these inter-company claims which have been satisfied of record, are valid. (R. 382-386, 334.) If

$9,995,226.78 of the $10,355,226.78 in said notes are valid, then the balance of said notes given as part of said intercompany claims must also be conceded as valid.

The attention of this honorable Court is called to the fact that "the items which made up the total $10,565,226.78 were clearly specified and evidence of the validity of the debt as consideration for the notes were adduced before the Commission at an early stage of these Section 77 proceedings, and the obligation was deemed to be valid and ahead of New Orleans' (NOTM) stockholders interest in all of the accountings, computations and adjustments resulting in the plan of reorganization determined by the Commission and approved by the Court in 1940" (R. IV, pp. 16-17).

Facts Regarding Comstock's Claims

Petitioner Comstock owns some of said 5¼% Serial bonds. From the testimony given before the District Court, it clearly appears that as to the case presented on the objections to the old approved plan of reorganization, Comstock had, after the report of the Senate subcommittee which criticized the MOP management of NOTM and in 1940 (7 years after the commencement of these proceedings) bought these MOP bonds at about 10 cents on the dollar and then employed an accountant to make studies of the accounts, records and reports of MOP management of the NOTM properties with a view toward bolstering a law suit. Comstock's charges are based entirely on his accountant's interpretation of MOP's figures (See R. IV, p. 20). These studies were not designed to reflect the system character of all the Gulf Coast Lines held under MOP ownership but rather to develop NOTM as a completely independent unit, neither asking nor requiring to give financial or other support for the benefit of the entire MOP System.

The alleged "mismanagement" of NOTM, if any, took place from 1925 to 1933 and hence the claimant Comstock

under any circumstances was guilty of laches in presenting his objection. Furthermore, Comstock's champertous conduct in buying into a lawsuit should not commend itself to this Court of equity. The object of such litigation can only be to delay final reorganization of the Debtor.

The testimony on behalf of respondents was supported by many accountants and summarizing exhibits all to the effect that MOP management of NOTM properties was honest and was beneficial to NOTM.

It is respectfully submitted that notwithstanding such proofs respondents were not required to show benefits accruing to NOTM, since an identical set of officers managed MOP and NOTM and other branch lines of MOP. The important question was whether MOP as a railroad system and overall operating company benefited and not whether *each* of its subsidiaries or *each* branch line prospered. In this connection, the attention of this honorable Court is called to the fact that the petitioner Comstock "did not assert or tender evidence to show that any specified individuals working for NOTM or MOP or both companies has misappropriated or wrongfully diverted to their own use any of the assets or business of the NOTM to the detriment of stockholders. He tendered no evidence to show that the plan of MOP System expansion, including expansion and improvement of the New Orleans (NOTM) and for the financing thereof, adopted and carried through by the Missouri Pacific (MOP), was in itself fraudulent or reckless and improvident" (R. IV, pp. 19-20).

District Court's Findings and Findings by the Circuit Court of Appeals

The District Judge heard testimony on Comstock's objection to the plan of reorganization for two weeks. His questions, comments and directions reflect his close attention to and understanding of the testimony and its application through the trial. His written opinion is reported in

64 F. Supp. 64. His findings of fact and conclusions of law were drawn with care and thoroughness, and are responsive to all the issues presented by the objections. No claim is made of any refusal on the part of the court to make findings in respect to any other issues claimed to have been presented.

That MOP drew on the NOTM properties and financed the same may be conceded. That is the reason MOP as previously constituted, purchased or acquired control of NOTM, viz., for the enlargement and unification of the present MOP System. We respectfully submit that there was no illegality in this.

The disputes and conflicts of testimony in respect to the allowance of the MOP claim as reflected by the accounts and the inferences to be drawn were all issues of fact. The findings unanimously sustained by the United States Circuit Court of Appeals, 8th Circuit cover many printed pages of the record and to discuss them in connection with the contrary inferences which petitioner contends should be drawn from particulars of evidence would serve no useful purpose. MOP's $200,000,000 expansion and improvement program and the accounting system that was used and by which the directors were kept informed for management purposes (which accounting system was under I. C. C. supervision) and the whole course of the management of NOTM is revealed in the evidence. There was no desire or intent on the part of MOP's Trustee or the present operating officers to conceal or withhold any information.

The findings indicate the opposing contentions made on the trial and cover the particulars of the evidence and indicate the bases of the court's action.

The Circuit Court of Appeals 8th Circuit, carefully considered the record in the District Court and in a well reasoned opinion declared that it too was satisfied from its examination thereof that the findings of the trial court were not erroneous and that on the facts as found the claim of MOP was properly allowed and the petitioner's

objections and claims for special treatment were properly denied (R. IV, pp. 14-27).

Petitioner Comstock has suffered no damage. On the contrary he has a handsome profit on his speculation.

Therefore what purpose he has in prosecuting this appeal is not clear, unless it is to endeavor to place himself in a bargaining position so he can unnecessarily protract this proceeding to reorganize MOP. However, a reading of the opinions of both Courts will demonstrate that Comstock received the benefit of the kind of judicial decision to which he was entitled—an application of the law to the facts of the case. Fairness and justice do not require more than this.

The judgments of the courts below should be affirmed.

ARGUMENT

Summary of Points of Fact

The salient facts concerning the objections which are the subject of this appeal, filed in the District Court by Comstock, to the last plan of reorganization, which facts are not disputed, are as follows:

1. There is no approved plan of reorganization for MOP at the present time.

2. The facts as to "domination" of NOTM by MOP as claimed by petitioner Comstock took place in 1924. The claim as to domination ignores the fact that MOP is an integrated railroad system of which NOTM is a part; officers for NOTM and MOP until bankruptcy, were the same; the Trustee is the same. NOTM shared in a $200,000,000 expansion and improvement program designed to benefit the entire MOP System.

3. Comstock bought a few of MOP 5¼% serial bonds in 1940 but waited until November 22, 1944 before present-

ing his objections to the then approved plan of reorganization. Comstock admittedly paid about 10 cents on the dollar for these bonds. He cannot show that he has been damaged in his speculation. Comstock owns no stock in NOTM.

4. There is no illegality claimed or shown in MOP's acquisition of the NOTM properties. Petitioners are not minority or dissenting NOTM stockholders of that transaction. Even if petitioners were bona fide bondholders of MOP following acquisition of the NOTM properties, they must be deemed to have ratified MOP's management, control, etc. of NOTM's properties.

5. The I. C. C. has declared valid a loan transaction with the R. F. C. and the R. C. C. whereby MOP pledged as collateral $9,955,226.78 of its $10,355,226.78 claim against the NOTM properties. Hence the claim has been adjudicated valid.

6. Convertible Bonds represented by the undersigned respondents are secured by the entire equity of MOP necessarily including equities of all subsidiary properties. The MOP 5¼% serial bonds held by Comstock are secured only by a pledge of NOTM stock.

7. Convertible Bondholders Group, respondents herein are *bona fide* bondholders and are not allied in interest with any persons who composed the management of MOP, and who may have (if indeed anyone has) benefited from the NOTM transactions. Convertible Bondholders Group, Respondents have a right to assume that all subsidiary property of MOP will be used for the benefit of MOP creditors.

8. The interpretation of the accounting practices of MOP as made by Comstock is in disregard of the best interests of System operation of MOP and the benefits accruing to MOP as a whole and contrary to the rules prescribed by the I. C. C.

SUMMARY OF POINTS OF LAW

Point I

The District Court and the United States Circuit Court of Appeals Were Justified in Overruling Petitioners' Contentions. It is not the Practice of this Court to Try Any Case de Novo.

Point II

Petitioner Comstock, as Owner of Secured Serial 5¼% bonds of MOP the principal Debtor, cannot now be heard to complain because the results of MOP's management of its NOTM properties were not profitable.

Point III

Even if Petitioners Were in Position of NOTM stockholders, they Could not Be Heard to Complain against Respondents.

Point IV

If the facts alleged by Comstock are found by this Court to warrant equitable redress, the Convertible Bondholders Group, respondents, are nevertheless entitled to have the benefit of the allowance of the said claim of $10,565,226.78 plus interest. Petitioner's claim or dispute is with Alleghany Corporation only.

Point V

Comstock's objections were properly overruled as against the Convertible Bondholders Group on other grounds.

Point VI

***Taylor* v. *Standard Gas Co.*, 306 U. S. 307, principally relied on by petitioners is clearly distinguishable and inapplicable to the case at bar.**

POINT I

The District Court and the United States Circuit Court of Appeals were justified in overruling petitioners' contentions. It is not the practice of this Court to try any case *de novo*.

Putting aside for the moment the stubborn fact that the Comstock objectants took no steps for more than 11 years to invalidate the proof of claim which was filed and allowed by the Trustee on August 28, 1933 against NOTM properties in the amount of $10,565,226.78 and later re-examined by the Trustee and allowed in 1935, the District Court was justified in refusing to accept Comstock's 1946 version of the MOP claim.

Comstock's objections against allowance of the MOP claim can relate only to the treatment which he ultimately receives under an approved plan as holder of MOP 5¼% serial bonds. The objections which petitioners assert, however, are against the treatment which NOTM minority stockholders received under the old plan as a result of the allowance of said MOP claim. In so doing, these petitioners' claims are not only premature and lacking in legal authority (Comstock owns no NOTM stock), they are inconsistent as well. The two matters are entirely unrelated; the two positions they assume are contradictory. The treatment of an NOTM stockholder under an adopted plan of reorganization will be necessarily different from that accorded a MOP 5¼% serial bondholder.

The Trustee for the entire MOP System is best qualified and is required by law to determine the merits of Comstock's and any other asserted claims or objections to claims and whether to overrule or to allow them.

Comstock challenged the validity of the proof of claim filed and allowed against the NOTM properties by the

Trustee for the principal debtor MOP. He claims that the MOP Trustee, being also Trustee of NOTM, could not give NOTM the "vigilant protection of an independent Trustee". Comstock asked the District Court to again re-examine the claim and that it be disallowed.

To argue thus, Comstock petitioners overlook the fact that they are MOP bondholders and not NOTM bondholders. Secondly, as such MOP bondholders, these objectants must consider the System nature of their obligation and not the individual properties which make up the MOP System.

Furthermore, it was affirmatively established before the District Court by Guy A. Thompson, the Trustee for MOP, that said objectants knew the merits or demerits of the MOP claim against NOTM as long ago as 1935 and were then given an opportunity to contest said claim, yet they made no objection thereto and took no appeal from the Court order allowing the same.

The allowance of the claim in 1933 and again in 1935 made it a *fait accompli*, and it is grossly unfair to public investors in MOP securities in the light of the merits of the claim to require such a reversal on the part of the Trustee or the Courts as will result in depriving them of substantial property rights which would result if any decision should now be made re-examining said claim in accordance with petitioners' proposed bookkeeping methods, and adversely determining the same.

There never was any question about the propriety of Guy A. Thompson acting as Trustee of MOP and NOTM properties. He was appointed as such following the identical officer management for MOP and NOTM prior to 1933. He was appointed as such Trustee by an order of the District Court from which no appeal was taken by these petitioners. The order of his appointment has not been rescinded, nor was Mr. Thompson requested by *bona fide*

NOTM creditors or stockholders to resign from NOTM trusteeship because of inconsistent or divergent interests.

The claims alleged by Comstock are simply matters of accounting and administration by MOP of its subsidiary properties. Comstock's interpretation of MOP's accounting methods and his characterizations simply ignore the MOP accounting system (prescribed by the I. C. C.) and exaggerates and distorts the importance of NOTM properties in a unified system.

The Trustee of the principal Debtor MOP represents all creditors.

It was so held in *In re Lewensohn, supra* (C. C. A. 2d Circ.) 121 Fed. R. 538, 539, 540 cert. denied 189 U. S. 513.

Also in *Maryland Casualty Co.* v. *Freeman,* 71 Fed. (2d) 1011, *supra,* citing many authorities.

Also please see *Fred Reuping Leather Co.* v. *Fort Greene Nat. Bank of Brooklyn, N. Y., In re Honesdale Union Stamp Shoe Co., Inc.* (C. C. A. 3d Circ.) (1939), 102 Fed. (2d) 372, *supra.*

Despite the legal and the factual situation obviating any need therefor, a hearing on Comstock's Objection No. 19 and related objections to MOP's claim, before the District Court, was nevertheless allowed. It lasted two weeks. The District Judge in charge of this proceeding heard the testimony, etc. and made findings of fact and conclusions of law "drawn with care and thoroughness" (R. IV, p. 23) and "responsive to all the issues presented by the objections here involved and the evidence that was adduced." The District Court overruled the petitioners' contentions.

The vast extent of the railroad business carried on by the MOP during the long past period of alleged mismanagement and the intricate corporate structures of the MOP system of railroads inevitably presented most seri-

ous problems in the attempts of accountants to picture what their course of operations and financial transactions had been (R. IV, p. 23).

The NOTM properties had in some respects the character of a holding company in that it operated itself only a small fraction (around 11%) of the railroad mileage of its railroad system, but owned the stocks and securities of some 14 other railroad companies in the same area.

For financing purposes, the individual roads comprising the NOTM group were dependent upon NOTM which acted for the group in respect to financing, and presented the necessary unitary functioning principal.

It was for the District Court to draw the inferences from the conflict in testimony with regard to the true financial condition of NOTM at different times within the period and to establish and present the financial results of the railroad operations that were carried on. It was through the use of the consolidated balance sheets that NOTM properties were treated as a unit in the financing of the companies through MOP management. Petitioner before the District Court insisted upon a "break down of the figures" to the smallest branch line of the NOTM properties to support his version of the figures that the finances of said branch line had been mismanaged.

But the disputes and conflicts of testimony and documents in respect to the accounts and the inferences to be drawn therefrom were all issues of fact. From the order of the District Court overruling Comstock's objections, petitioners took an appeal to the U. S. Circuit Court of Appeals, 8th Circuit.

The Circuit Court of Appeals was satisfied, however, from their examination of the voluminous record that the findings of the trial court were not erroneous and that on the facts as found the claim of MOP was properly allowed

and the objections and claim for special treatment asserted by Comstock were properly overruled and the order appealed from was unanimously affirmed.

Petitioners here again have stated the case in substantial disregard of the findings of the trial court and practically as though the case was here to be tried by this Court *de novo* on the evidence submitted.

This Court must decline to assume that function. This honorable Court may not and should not set aside the findings of fact which have been made by the trial court and confirmed by the U. S. Circuit Court of Appeals.

Allen v. *Trust*, 326 U. S. 630, 636;
U. S. v. *O'Donnell*, 303 U. S. 501, 508;
Goodyear Co. v. *Ray-O-Vac. Co.*, 321 U. S. 275, 278;
General Orders in Bankruptcy Nos. 36 and 49 (11 U. S. C A 53 post.);
First Nat'l v. *Littlefield*, 226 U. S. 110, 112.

The findings thus sustained by the United States Circuit Court of Appeals cover many printed pages of the record, and to discuss them in connection with the contrary inferences which these petitioners contend should be drawn from particulars of evidence would serve no useful purpose (R. IV, p. 26). Petitioners' objections do not aid in completing the reorganization of the MOP System which is the subject of this proceeding.

The judgment of the Trustee, of the District Court and of the United States Circuit Court of Appeals, 8th Circuit was right. The judgment and order appealed from should be affirmed.

POINT II

Petitioner Comstock, as owner of secured serial 5¼% bonds of MOP, the principal debtor, cannot now be heard to complain because the results of MOP's management of its NOTM properties were not profitable.

The purposes for which MOP issued the serial 5¼% bonds cannot be traced directly and exclusively to the purchase by MOP of NOTM stock. In other words, it is not the claim of Comstock that he was an original owner of NOTM stock and that he was induced to exchange the same dollar for dollar for MOP 5¼% serial bonds. Comstock does not profess to be a minority stockholder of NOTM. Comstock does not claim any fraud in the transaction whereby he became a MOP 5¼% bondholder.

There is no privity of contract between NOTM stockholders and the petitioner Comstock or with any other 5¼% serial bondholder. Comstock was never a holder of NOTM stock. The transaction (*i. e.* pledge of NOTM stock to purchasers of MOP serial 5¼% bonds) was not shown to be unprofitable for such bondholders at the time when such bonds were received. Nor did these petitioners or any other holder of 5¼% serial bonds at any time thereafter disaffirm their transaction upon learning of the alleged malfeasance of MOP either at the commencement of the reorganization proceedings or after the report of the U. S. Senate subcommittee.

The above statement is made not in defense of wrongdoing, if any took place, but rather to demonstrate to this honorable Court that these petitioners in any view of their complaint, are not before this Court with clean hands and that they have slept on their rights so long that an abnegation of MOP's claims at this late date will adversely affect the interests of innocent and bona fide

holders of the 5½% Convertible bonds which were sold to the public in the sum of $45,493,000 after May 1, 1929.

The matters about which Comstock complains, took place in 1924.

Since then MOP bond issues have been sold to the public with the approval of the I. C. C. MOP's credit has thereby been pledged to bona fide purchasers of MOP bonds who purchased same before maturity and without knowledge of any alleged infirmities. These persons, members of the public, have vested valid property rights which must not be avoided at this late date.

Therefore, even if all the facts stated by Comstock were true (which we deny), it would be impossible, not to say unfair, to restore the equities of the parties to their original status for it is impossible to recast NOTM's history and experience so as to even approximate what might be its financial condition at this date, had NOTM been independent of the MOP system.

Moreover, the acceptance by other MOP 5¼% serial bondholders of interest payments on these obligations paid regularly by MOP, on and after December 1, 1926 when these bonds were issued and sold to the public until the commencement of this proceeding, must be deemed a ratification by said bondholders of the System operation of the MOP properties. Having accepted these benefits and the obligation of MOP, they cannot now disavow the diminished or impaired value of their collateral security as a result of the System operation of the MOP properties and, now for the first time, demand that the entire situation be disregarded in the interest of NOTM.

The inequalities or inequities which may have existed for NOTM stockholders from 1924 to 1926 under MOP's domination and control of NOTM properties were cancelled and released in the transaction by which NOTM

stockholders received cash notes or MOP 5¼% serial bonds for their holdings.

Only lien bondholders of NOTM have a right to complain of irregularities or imprudence in the management of their affairs by MOP, for only NOTM creditors have (if the facts regarding NOTM as alleged by petitioners be true) lost the right of recoupment. This is not true, however, of NOTM stockholders who as we have said, upon MOP's purchase of NOTM control, either received cash or notes or 5¼% serial bonds of MOP for their stock. Comstock is not a NOTM creditor, and the NOTM Mortgage and Income Bondholders Committee are respondents on this appeal.

The inducing causes or the statements made upon which Comstock relied in buying 5¼% serial bonds were not established before the District Court. Such evidence was not offered by said petitioner. Yet this would be vital to any claim of fraud or overreaching.

There was no irregularity in the transaction whereby MOP purchased a 93% stock interest in NOTM properties and dominated that railroad. Control of NOTM properties by MOP carried with it the right to operate NOTM for the benefit of the entire system.

Petitioners, therefore, have no legal or equitable right to disavow legal claims against NOTM properties because of MOP's past or present management of said properties for the benefit of the MOP System, since respondents had no part in the management of its properties and such management as existed was also for the benefit of petitioners.

Petitioners' objections are without warrant in fact or law.

The orders of the Courts below should be affirmed.

POINT III

Even if petitioners were in position of NOTM stockholders, they could not be heard to complain against respondents.

Comstock holds no original NOTM stock. But even if the NOTM stock was declared forfeit under the provisions of the indenture, if any, securing the 5¼% serial bonds, the NOTM stockholders have no cause for complaint against other MOP creditors for the management of NOTM properties since MOP creditors, respondents herein, did not share in MOP management.

It should also be noted that:

(a) The matters complained of allegedly took place more than twenty (20) years ago and any complaint based thereon is barred by the Statute of Limitations.

(b) Petitioners are not NOTM minority stockholders.

(c) These petitioners are in a dual conflicting position, on the one hand attacking the transaction whereby MOP allegedly exercised unlawful dominion and control of NOTM properties yet (according to Comstock) accepting dividends declared from NOTM properties, which were used to pay MOP's interest on secured serial 5¼% bonds.

(d) If ownership of NOTM stock is claimed, the date of acquisition of such stock (whether before or after 1924) would be important, for if such stock was purchased after 1926, it was bought presumably with the knowledge that NOTM was part of the MOP system.

(e) Comstock must elect whether he contests the allowance claim as NOTM stockholder or pledgee, or as a MOP bondholder. His present position is inconsistent

and confusing on the matter of treatment of his objections and the assets from which he claims payment.

Since NOTM stockholders, therefore, would have no legal standing, how can Comstock claimants who are MOP bondholders and only pledgees of such stock (and not owners thereof) be heard to dispute any valid claim against NOTM properties?

Appellant's appeal is not brought in good faith.

POINT IV

If the facts alleged by Comstock are found by this Court to warrant equitable redress, the Convertible Bondholders Group, respondents, are nevertheless entitled to have the benefit of the allowance of the said claim of $10,565,226.78 plus interest. Petitioner's claim or dispute is with Alleghany Corporation only.

Assuming Comstock's argument is correct, which we deny, he does not show how this honorable Court can, at this date, be expected to put him back in status quo? How can this Court be expected to now determine and to separate that part of NOTM earnings which in 1924 and 1933 were considered the subject of prudent management by MOP and that part of earnings which it is now alleged were imprudent?

Aren't MOP minority stockholders and the Convertible Bondholders also victims of any misfeasance or malfeasance in management of MOP as alleged by Comstock?

Petitioner claimed throughout the lengthy hearings before the District Court that Alleghany Corporation as principal MOP stockholder was responsible for the alleged inequities against NOTM.

Assuredly Convertible Bondholders Group, Respondents herein, who purchased these bonds in the open market are

free of any knowledge of wrongdoing by MOP and in no circumstances, are answerable for any irregularities or defalcations brought about by Alleghany Corporation while controlling MOP.

This honorable Court has held that the debtor's securities remain in the custody of the reorganization Court, irrespective of where the property may be located, and that the Court has full jurisdiction over all questions respecting the title to such property.

Gardner v. *State of New Jersey* (1947), 329 U. S. 565.

Comstock does not claim that Convertible Bondholders Group, respondents, are *particeps criminis* with Alleghany Corporation and hence allowance of this claim cannot be disturbed, but may be set-off or assessed against all Alleghany's security holdings in MOP since 1933.

POINT V

Comstock's objections were properly overruled as against the Convertible Bondholders Group on other grounds.

The Convertible Bondholders Group, Respondents, whose interests have been and are independent of the Alleghany Corporation, respectfully submit that there are additional grounds which require the affirmance of the orders of the District Court and of the United States Circuit Court of Appeals. These are:

1. Petitioner Comstock is not the proper legal party to assert said objection. He has not the legal capacity to sue in the form and style adopted by him in these appeals. Comstock does not represent the Trustee nor has he obtained a prior order of this or any lower Court permitting him to do so; nor does he legally represent any intervening

group of serial 5¼% bonds; nor has he obtained the consent of the Trustee to bring or assert this claim, which by law, Comstock is obliged to do as a prerequisite. By his own admission, Comstock does not stand herein in this Court in any representative capacity. The I. C. C. denied his application to do so. Unless petitioner obtains these prerequisites, he can have no standing in this Court. Otherwise, the Courts will be constantly besieged by a multiplicity of unnecessary or vexatious suits brought either with or without cause at the instance of any one and there would never be a final determination of any issue or a final reorganization of a debtor in a Section 77 proceeding.

2. This petitioner has no legal interest in the claim he asserts. He purchased his securities in 1940, for ten cents on the dollar, years after the allowance of said claim against NOTM properties, and he has failed, therefore, to show vigilance or good faith in the prosecution of objections to said claim. Said petitioner failed to show that he sustained any damage.

3. Comstock has acquiesced in the allowance of said claim as a matter of law. Said petitioner affirmatively established before the District Court by Guy A. Thompson, the Trustee for MOP that he knew about the allowance of the MOP claim against NOTM as long ago as 1935 yet purchased the serial 5¼% bonds of the debtor in 1940, obviously for the purpose of making this belated objection. That petitioner intends to further unnecessarily delay this reorganization, see his brief, page 4, third footnote.

4. Security holders of MOP and those who became security holders of MOP after the allowance of said claim against NOTM properties have obtained as a result thereof certain vested property rights. The previous determination of the Trustee for MOP to allow said claim cannot now be upset by this creditor. To do so would be to deprive all subsequent MOP security holders of their prop-

erty rights without due process of law in contravention of the Fifth Amendment to the Constitution.

5. Petitioner's version of the facts is not in accordance with the proof.

Although petitioner claims "there is remarkably little in the record which is disputed" (Petitioner's Brief, p. 2), he proceeds to give a distorted version of "MOP ownership of NOTM, 1924 to Bankruptcy" (Petitioner's Brief, pp. 5-7). It will serve no useful purpose to here review these facts herein at length.

It is clear that petitioners purposely ignore the System character of MOP's bookkeeping methods and criticize "the dividend policy imposed on NOTM" (Petitioner's Brief, pp. 7-8) and the alleged "matching of simultaneous MOP advances to NOTM and NOTM dividends to MOP" as having been "drained from Brownsville to make possible NOTM dividends to MOP" (Petitioner's Brief, pp. 9-11).

Petitioner would have every ticket office and every facility in the myriad operations of the MOP system pay to itself and only for itself in complete disregard to the welfare or necessities of the entire railroad system MOP functioning as a whole (Petitioner's Brief, pp. 24-26; pp. 28-29).

6. Petitioner's version of the law does not apply to the facts adduced before the District Court.

Petitioner considers the separate units of MOP as being the *cestuis que trustent*, in a fiduciary relationship with MOP management.

We do not so interpret the facts. NOTM properties owed MOP every loyalty of a fiduciary but the reverse is not true. While NOTM was and is being operated as an integral part of the MOP System, MOP was under no reciprocal duty to NOTM.

The burden of petitioner's argument is that Alleghany Corporation's management of MOP was disastrous for MOP and all its subsidiary properties (Petitioner's brief, pp. 14-16; pp. 20-23). To the extent that such was the fact, we have no objection to also charging the $10,565,226.78 claim with interest against Alleghany's securities or interest in MOP, but we respectfully submit, that said claim must be enforced as already allowed and found, viz., against the NOTM properties.

7. Petitioners admit that a portion of the $10,565,227 claim ($9,955,226.78 thereof) was validly pledged as security for loans made to MOP by the RFC and the RCC. (R. 19-21; Petitioners' Brief, p. 62; also R. 176-177; 186-187; 382-386.)

Under authorization of the I. C. C., granted after hearing, MOP pledged two notes evidencing such debt to the RFC and the RCC. The RFC and the RCC claims have been paid by the Trustee for MOP (see footnote, p. 16, *supra*), without objection from petitioners and the order authorizing payment by the Trustee subrogated the claims of the 5½% Convertible Bondholders to the extent of their interest (R. 1188, Ex. 335-357) to the lien of the RFC and the RCC on the pledged collateral, including the pledged portion of the intercompany claim (R. 1157 and 1165).

"The items which made up the total $10,565,226.78 were clearly specified and evidence of the validity of the debt as consideration for the notes was adduced before the Commission at an early stage of these Section 77 proceedings, and the obligation was deemed to be valid and ahead of New Orleans' (NOTM) stockholder interest in all of the accountings, computations and adjustments resulting in the plan of reorganization determined by the Commission and approved by the Court in 1940. It has also been so considered by the Commission in the plan of reorganization before the court at the time of the hearing and order now appealed from." Quoted from opinion of the Circuit Court of Appeals. (R. IV, pp. 16-17.)

Obviously, if $9,955,226.78 of the $10,355,226.78 in said notes are valid, then the balance of said notes evidencing said intercompany claims for "cash advances for operation, interest payments, etc., at various times from March 1929 to February 1933, both inclusive", must also be conceded as valid. (R. IV, p. 16.)

8. The evidence adduced by petitioner failed to make out a case for legal or equitable relief before the District Court.

With the cooperation from the Trustee and the unusual patience and latitude shown, the District Court allowed petitioner unrestricted right to introduce evidence covering transactions of the principal debtor which occurred 36 years ago to wit, from 1912. The result is an unnecessarily voluminous record. Under the ancient documents rule such transactions should not now be disturbed or questioned in any way. Any oral evidence sought to be elicited thereon or any inferences of improper conduct sought to be drawn from parts of such evidence or from witnesses now dead or whose whereabouts are unknown was and is legally incompetent.

The petitioner despite the Court's indulgence failed to make out a claim by clear, competent proof.

Judgment of the United States Circuit Court of Appeals must be affirmed.

POINT VI

***Taylor* v. *Standard Gas Co.*, 306 U. S. 307, principally relied on by petitioners is clearly distinguishable and inapplicable to the case at bar.**

The petitioners have strenuously urged that the decision of this Court in *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307, requires reversal herein.

The United States Circuit Court of Appeals, however, ruled that this Court there had to deal with a situation entirely different. (R. Vol. IV, p. 27.) This Court later said concerning its decision in that case as to the subordination which it there imposed on a parent corporation's claims against the subsidiary:

> "This was based on the equities of the case • • • the history of spoliation, mismanagement, and faithless stewardship of the affairs of the subsidiary by Standard to the detriment of the public investors."
>
> *Pepper* v. *Litton*, 308 U. S. 295, P. C. 308.

"Here", to quote the United States Circuit Court of Appeals,

> "the trial court has found on substantial evidence an exactly contrary situation. The stock of the New Orleans (NOTM) has been kept intact and of recognized value through depressions which wiped out vast amounts of such securities, and on full investigation of the facts the court has found the Missouri Pacific's (MOP's) stewardship was faithful and there was no mismanagement or spoliation.
>
> We find no error in the trial court's findings against Comstock in respect to his charges of dereliction of duty by the trustee of the New Orleans (NOTM). Those charges are without merit" (R. IV, p. 27).

There are many other distinctions between the situation presented here and the *Taylor* v. *Standard Gas & Electric Co.* case. The following are the more obvious:

In the first place, the question presented was based on a plan of reorganization under § 77B of the Bankruptcy Act. The Circuit Court of Appeals by a *divided* court, approved the District Court's order.

murphy). p. 11

SUPREME COURT OF THE UNITED STATES

Nos. 451–454.—October Term, 1947.

Andrew W. Comstock, a Holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, etc., Petitioner, 451 v. Group of Institutional Investors, etc., et al.	
New Orleans, Texas and Mexico Railway Company, Debtor, etc., Petitioner, 452 v. Group of Institutional Investors, etc., et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.
Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, etc., Petitioner, 453 v. Group of Institutional Investors, etc., et al.	
Andrew W. Comstock, Petitioner, 454 v. Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, Debtor, et al.	

[June 21, 1948.]

Mr. Justice Jackson delivered the opinion of the Court.

Since 1933 the Missouri Pacific, the New Orleans, Texas and Mexico Railway Co. and a number of affiliated rail-

"Comstock's contention that the court erroneously put the burden of proving his charges on him rather than requiring the Missouri Pacific to proceed first to disprove them, is without merit. As the execution of the promissory notes was admitted and at least formal proof of all of the items of advancements making up the debt had been in the record of the Section 77 proceedings for many years before the hearing, the court required only that all the records of the transactions that were questioned be made available for the hearing so that there was the equivalent of a full disclosure by the Missouri Pacific before Comstock was required to proceed with his proof of the charges. In its findings the court stated the facts as it found them to be proven by the whole evidence. It found in detail and in effect that the Missouri Pacific had administered the affairs of the New Orleans in good faith to the advantage of that company; had made the advancements to it for proper purposes; had not caused dividends to be paid out of capital or improvidently in bad faith, and that the asserted indebtedness arose from advancement made by Missouri Pacific to New Orleans for betterments and additions and was valid and should be allowed in items specified, and that the plan of reorganization based as it was in part on recognition of the existence of the debt in question, was fair and equitable and conformable to the requirements of law regarding the participation of the various classes of creditors and stockholders."

We are confronted at the outset with petitioner's delay and conduct and its effect on the duty of this Court and that below to pass on the merits of his objections. Comstock, apparently with general knowledge of the conduct he alleges to be a wrong toward the securities which he now holds, bought them at about 10 cents on the dollar

nearly seven years after the alleged misconduct had ended. Thus, it was not Comstock who was a victim of any wrongdoing but those in whose hands the securities depreciated to the low point at which Comstock bought. It is apparent that Comstock bought a grievance to exploit and to reap the advantage of its rectification. Those who realised the loss through sales to Comstock could, in no event, be indemnified in this proceeding. From every viewpoint, the delay in asserting these claims is unusual. The District Court found it also prejudicial due to the death of six named witnesses and participants, among others, whose testimony would be important. While it considered the objections barred by laches, it nonetheless adjudged their merits.

We think that, in the reorganization proceeding, the courts may entertain on their merits objections to a plan even if made by one who might be barred from asserting a cause of action in his own behalf, if the subject-matter of the objections is such that it goes beyond the objector's individual interests and affects the fairness and equity of the plan. In view of the amount and position of the claim involved, we do not disagree with the Court of Appeals that such was the case here.

It also is true, as the court below indicates, that this objector made no effort to exhaust or to avail himself of administrative remedies in support of his objection. Neither the objection nor the evidentiary support for it were laid before the Interstate Commerce Commission in its hearings on successive plans of reorganization. The requirement that the Commission "hold public hearings, at which opportunity shall be given to any interested party to be heard and following which the Commission shall render a report" to the court is not provided without a purpose and is not to be ignored by persons with claims or objections to be heard. This issue involved matters with which the Commission and its staff are especially

In the case at bar, there is no approved plan of reorganization. There was *unanimous* affirmance of the District Court's order.

Secondly, Standard Gas & Electric Co. then had investments in various utility properties but had never been interested in oil. (The Deep Rock Oil Corp.)

In the case at bar NOTM is a vital part of MOP's railroad system.

In the next place, petitioner has not established that a fiduciary relationship exists between MOP and its creditor Comstock. There was a definite fiduciary relationship in the *Taylor* v. *Standard Gas Co.* case.

The right of intervening bona fide bondholders was not there involved and the claim made fell on the wrongdoers. Petitioners, by their inaction after knowledge of alleged wrongdoing involved the rights of innocent creditors and this situation has no counterpart in the case cited by petitioners.

In the case at bar no MOP creditor (except, possibly Alleghany Corp'n) has benefited from the alleged wrongdoing. MOP has been insolvent since 1933. Taylor was not suing as a creditor of Standard but as a minority dissenting stockholder. Comstock is not even a bondholder in due course.

Particularly Convertible Bondholders Group, respondents and other security holders who appear in these proceedings independently of Alleghany Corporation and who were not identified with its management or operation of MOP from 1924 to 1933 and who purchased MOP securities in good faith and for value, surely are guilty of no wrongdoing.

The judgment and decrees of the courts below must be affirmed.

CONCLUSION

The appeals should be dismissed and judgment and orders appealed from should be affirmed.

Dated, New York, N. Y., February 28, 1948.

Respectfully submitted,

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IN THE

Supreme Court of the United States

Nos. 451, 452, 453 and 454

ANDREW COMSTOCK, ET AL.,
Appellants,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ET AL.,
Appellees.

PETITION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

MORD M. BOGIE, AVERY BRUNDAGE, LEO J. SHERIDAN, DE LANCEY C. SMITH and PAUL E. KLING, as a Protective Committee for the Holders of Missouri Pacific Railroad Company 5½% Secured Serial Gold Bonds,

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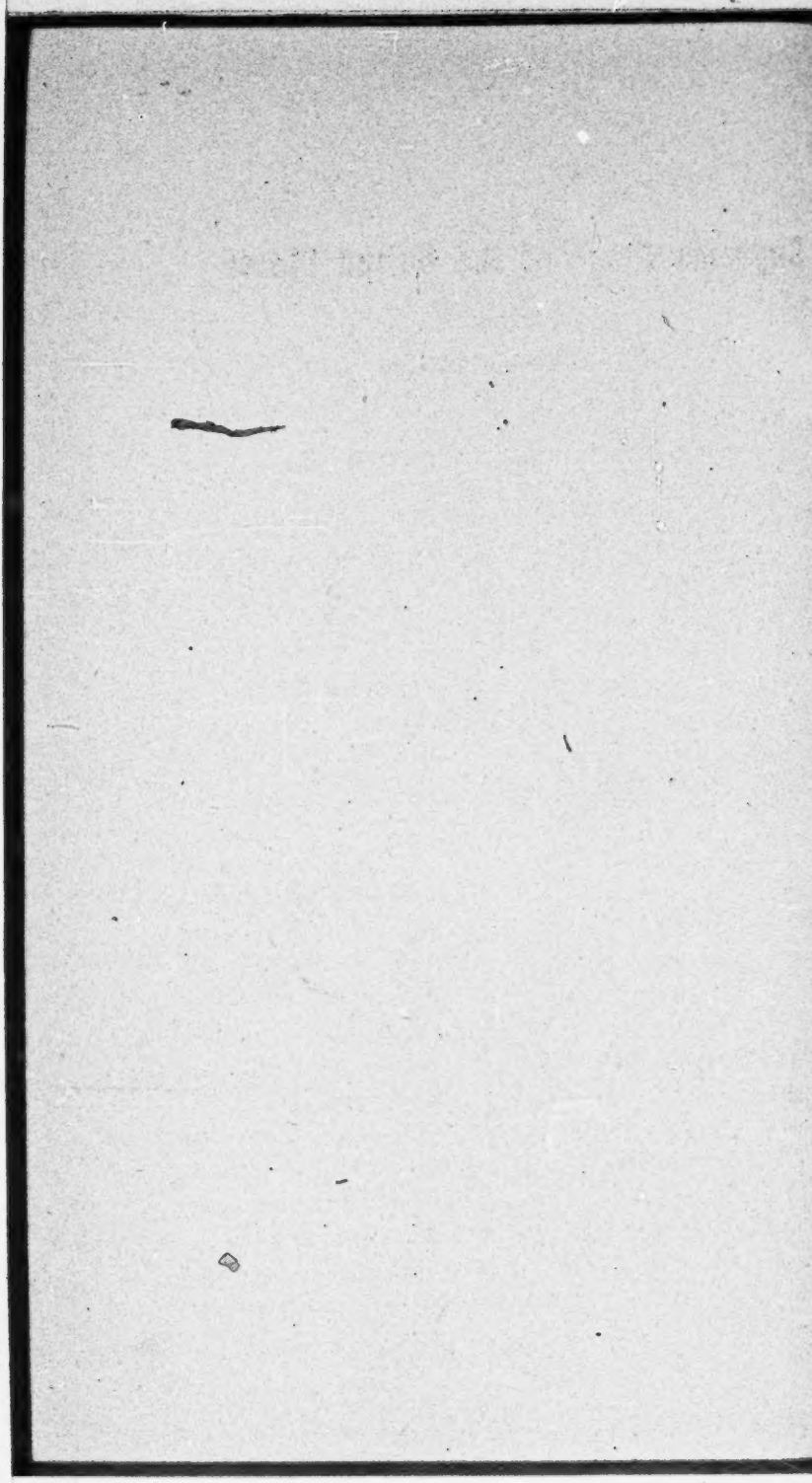

IN THE

Supreme Court of the United States

Nos. 451, 452, 453, 454.

ANDREW COMSTOCK, ET AL.,
Appellants,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ET AL.,
Appellees.

PETITION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

To the Supreme Court of the United States:

Now come Mord M. Bogie, Avery Brundage, Leo J. Sheridan, De Lancey C. Smith and Paul E. Kling, as a Protective Committee for the Holders of Missouri Pacific Railroad Company 5½% Secured Serial Gold Bonds, (hereinafter called the "Committee") and respectfully request that they be permitted to file their brief in this cause as *amicus curiae*. In support of their request the Committee shows:

The Committee is acting under and pursuant to an order of the Interstate Commerce Commission dated October 31, 1947, which provided, in part, that "Mord Bogie, Avery Brundage, Leo J. Sheridan and Paul E. Kling, as a protective committee for holders of Missouri Pacific Railroad Company 5½% secured serial gold bonds, are hereby author-

ized, pursuant to section 77(p) of the Bankruptcy Act, as amended, 11 U. S. Code, sec. 205, to solicit from holders of such bonds their authorizations for the committee to act for and represent them, without deposit of the bonds, in accordance with the provisions of the authorization described in the report, in connection with the consummation of a plan of reorganization of the Missouri Pacific Railroad Company, debtor, in proceedings No. 6935 for reorganization under section 77 of the Bankruptcy Act now pending in the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, or in any receivership proceeding against the debtor which may follow such pending proceeding but precede consummation of a reorganization of the debtor, or in any matters relating thereto now pending or hereafter instituted, and to use, employ, or act under or pursuant to such authorizations, as the representatives of such holders, in such proceedings."

Mr. De Lancey C. Smith recently has been elected a member of the Committee, and has accepted such election, subject to the approval of the Interstate Commerce Commission pursuant to petition for approval now pending.

The Committee has solicited and is now soliciting authorizations to represent holders of said 5½% Serial Bonds, and has filed with the Interstate Commerce Commission and the District Court, Eastern Division, Eastern District of Missouri, petitions for leave to intervene in the reorganization proceedings of Missouri Pacific Railroad Company and affiliated debtors.

The Committee presently represents over $1,000,000 principal amount of said 5½% Serial Bonds and expects ultimately to represent a substantially greater principal amount thereof. The interests of all such bondholders are identical.

The Committee does not desire to file a long brief duplicating those already on file, but believes that a short brief placing particular emphasis on one line of thought will be helpful to the Court in reaching its decision herein.

Wherefore, the undersigned Committee requests leave to file a brief herein as *amicus curiae*.

Respectfully submitted,

MORD M. BOGIE, AVERY BRUNDAGE, LEO J. SHERIDAN, DE LANCEY C. SMITH and PAUL E. KLING, as a Protective Committee for the Holders of Missouri Pacific Railroad Company 5½% Secured Serial Gold Bonds,

By GUY A. GLADSON,
Counsel.

WINSTON, STRAWN & SHAW,
Chicago, Illinois,
Of Counsel.

road corporations have been in reorganization under the Bankruptcy Act, 11 U. S. C. § 205. A second plan of reorganization, approved by the Interstate Commerce Commission, was before the District Court for the Eastern District of Missouri. Comstock then, in 1944, made objection to allowance of a claim of approximately 10 million dollars by the Missouri Pacific, one debtor corporation, against another, the New Orleans, which, during the 10 years of proceedings, had been unchallenged. The issues raised by his objection were severed from other problems of reorganization which do not concern us here. After full hearing the District Court made findings and wrote an opinion, *In re Missouri Pacific R. Co.*, 64 F. Supp. 64, overruling his objections. The Circuit Court of Appeals for the Eighth Circuit affirmed. *Comstock* v. *Group of Institutional Investors*, 163 F. 2d 350.

The issues of fact, contested in a long hearing, are not before us for review. Petitioner assured us, in support of the petition for certiorari here, that "there is no factual controversy before this Court" and "we assume the findings of the District Court. Our challenge is directed only to the legal import of these unchallenged facts."

Much of petitioner's argument seems to depart from these assumptions and to invite us to reach conclusions from the voluminous record in the case, contrary to those reached by the two courts below. This we cannot do. A seasoned and wise rule of this Court makes concurrent findings of two courts below final here in the absence of very exceptional showing of error. *Stuart* v. *Hayden*, 169 U. S. 1; *Brainard* v. *Buck*, 184 U. S. 99; *First National Bank* v. *Littlefield*, 226 U. S. 110; *Baker* v. *Schofield*, 243 U. S. 114; *Second Russian Insurance Co.* v. *Miller*, 268 U. S. 552; *Texas & N. O. R. Co.* v. *Brotherhood of Clerks*, 281 U. S. 548; *Page* v. *Arkansas Natural Gas Corp.*, 286 U. S. 269; *Pick* v. *General Motors Corp.*, 299 U. S. 3; *Virginia R. Co.* v. *System Federation*, 300 U. S. 515; *United States* v. *O'Donnell*, 303 U. S. 501; *Anderson* v.

Abbott, 321 U. S. 349; *Allen* v. *Trust Co.*, 326 U. S. 630; *United States* v. *Dickinson*, 331 U. S. 745. No such error is claimed by petitioner.

Since we are concluded by such concurrent findings, we can do no better than to adopt the statement of facts made in the opinion of the Court of Appeals, on the basis of which petitioner's propositions of law are predicated and must be decided. The essential facts so recited are:

> "It appears that the Missouri Pacific acquired the controlling interest in the capital stock of the New Orleans at the end of 1924 and at times relevant here owned from 58 to 93 percent of the total $15,000,000 par value of such stock, and from January 1925, until simultaneous commencement of reorganization proceedings in bankruptcy of both corporations in 1933, it managed the affairs of the New Orleans through Missouri Pacific officers who were given corresponding positions in the New Orleans corporation. An expansion program for both companies was carried on and throughout the course of operations the Missouri Pacific made advancements for improvements and betterments to the New Orleans. Some were repaid, but in February 1933, the New Orleans filed its application with the Interstate Commerce Commission under Section 20a of the Transportation Act (49 U.S.C.A. Sec. 20a (2)), showing that it was indebted to the Missouri Pacific for an accumulation of such advances over a period of years remaining unpaid in the sum of $10,355,226.78, and that it had been requested by the Missouri Pacific to issue demand notes therefor in the amount of $9,955,226.78 to the Missouri Pacific. It had partially complied by issuing one such note for $400,000.00, and one for $2,498,500, and after hearing the Commission made its finding as required by the

statute,[1] 49 U.S.C.A. Sec. 20a (2), and authorized New Orleans to issue to the Missouri Pacific a note for the remaining $7,456,726.78. So that at the time of the bankruptcy of the New Orleans on the same date as that of the Missouri Pacific the notes of the New Orleans to the Missouri Pacific in the sum of $10,355,226.78 were outstanding and unpaid. Under authorization of the Interstate Commerce Commission, granted after hearing, the Missouri Pacific had pledged two of the notes aggregating $9,955,226.78 as security for loans made to it by the Reconstruction Finance Corporation. An additional pledge was made to Railroad Finance Corporation.

"After appointment of the trustees for the railroads and on August 29, 1938, an officer of the Missouri Pacific filed claim for that company against the New Orleans for the amount of the notes, plus an item of advancement of $210,000.00, aggregating the amount of $10,565,226.78, describing the consideration as 'cash advances for operation, interest payments, etc., at various times from March 1929 to February 1933, both inclusive.' The items which made up the total $10,565,226.78 were clearly specified and evidence of the validity of the debt as consideration for the notes was adduced before the Commission at an early stage of these Section 77 proceedings, and the obligation was deemed to be valid and ahead of New

[1] "'* * * that the issue by the New Orleans, Texas & Mexico Railway Company of a note or notes in an aggregate amount not exceeding $7,456,726.78, as aforesaid, (2) is for a lawful object within its corporate purposes, and compatible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.' New Orleans, Texas & Mexico Railway Company Notes, Finance Docket No. 9817; 189 ICC 600, 601, (1933) (R. 20839–20840)."

Orleans' stockholder interest in all of the accountings, computations and adjustments resulting in the plan of reorganization determined by the Commission and approved by the court in 1940. It has also been so considered by the Commission in the plan of reorganization before the court at the time of the hearing and order now appealed from.

"It appears that in 1926 the Missouri Pacific issued and caused to be sold to the public its 5¼% Secured Serial Bonds in the amount of $13,156,000, secured by the pledge of $1000.00 par value of New Orleans capital stock for each $1000.00 principal amount of outstanding bonds, so that the officers who were put in charge of the affairs of both corporations came under fiduciary obligation to the creditors and the stockholders of each company to handle honestly the affairs of each.

"Comstock owns some of said 5¼% Secured Serial Bonds so secured by the pledge of the New Orleans capital stock, and by virtue of his ownership of said bonds he has an interest as a creditor of the Missouri Pacific in the payment of his bonds and the interest thereon, and also an interest in the capital stock of the New Orleans pledged to secure the bonds. On November 22, 1944, he filed his objections to the plan of reorganization and plea for equitable treatment on the basis of those interests. Certain of his objections contained charges of mismanagement of the Missouri Pacific to his detriment as a bondholding creditor of that corporation, but the separately numbered objections here involved relate to wrongs which he alleges were done by the Missouri Pacific to the New Orleans to the detriment of his interest in the pledged stock of that company.

'By his objections 'Numbered 19 and related objections,' Comstock charged that during the period

when the affairs of the New Orleans were controlled by its majority stockholder the Missouri Pacific, between the end of 1924 and the bankruptcy in 1933, the Missouri Pacific management caused the New Orleans to pay dividends illegally out of capital and to improvidently declare and pay dividends unjustified by the business and condition of the New Orleans; improperly loaned money to it for the purpose of enabling it to pay dividends; involved it (the New Orleans) in expansion and improperly made advancements to it and caused it to assume indebtedness growing out of expansion; caused it to be operated with unfair advantage to the Missouri Pacific and loss to itself, and generally mismanaged it and committed spoliation and waste of its property and interests to the financial detriment of the New Orleans and for the benefit of the Missouri Pacific. There is also a charge that the trustee for the New Orleans, who is also trustee for the Missouri Pacific, failed to perform his duties as trustee for the New Orleans, to the detriment of New Orleans stock interest. Although an Exhibit 'A' attached to the objections assumed to set forth details, the charges remained sweeping and general in form with few exceptions.[2]

"The objector prayed that the Missouri Pacific claim for $10,565,227 and interest against the New Orleans be disallowed; that it be determined that the New Orleans was not indebted to the Missouri Pacific, and in the alternative, that all claims of the Missouri Pacific against the New Orleans be subor-

[2] "The exhibit 'A' also included excerpts from a report of a subcommittee of the United States Senate on the subject of Missouri Pacific System—Inter Company Dividends and Advances, published about July 29, 1940, which criticized Missouri Pacific management of the New Orleans."

dinated in the reorganization to the New Orleans capital stock interest.

"The allegations of breaches of obligations on the part of the Missouri Pacific were traversed in pleadings of other parties in interest. The main burden of producing witnesses and evidence to justify the handling of the affairs of the New Orleans by the Missouri Pacific during the period of Missouri Pacific management and to prove the $10,565,226.78 indebtedness of the New Orleans to the Missouri Pacific was carried at the trial by the Group of Institutional Investors Holding First and Refunding Mortgage Bonds of Missouri Pacific Railroad Company and The Protective Committee for the holders of General Mortgage Bonds of Missouri Pacific Railroad Company. They recognized fully the fiduciary nature of the obligation which law and equity attributed to the Missouri Pacific by reason of its pledge of the capital stock of the New Orleans to secure the 5¼% Serial Bonds while the New Orleans was under its management as majority stockholder, and that by the terms of the pledge the Missouri Pacific was entitled to receive itself only the dividends (lawfully and properly declared) of the New Orleans stock and was required as to the corpus of said stock to honestly manage the corporate affairs and to exercise honest judgment and good faith to preserve the stock interest inviolate.

"Comstock did not question or deny that the New Orleans had executed its negotiable promissory notes to the Missouri Pacific which were outstanding at the time of the trial drawing interest, and conceded that the Reconstruction Finance Corporation as an innocent holder thereof in pledge could hold the New Orleans for their face amount and interest, but his contention was that by reason of its wrong-doings the Missouri Pacific either had no valid claim or that such

claim as it had should be subordinated to the capital stock interest. He did not assert or tender evidence to show that any specified individuals working for the New Orleans or the Missouri Pacific, or both companies, had misappropriated or wrongfully diverted to their own use any of the assets or business of the New Orleans to the detriment of stockholders. He tendered no evidence to show that the plan of Missouri Pacific system expansion, including expansion and improvement of the New Orleans, and for the financing thereof, adopted and carried through by the Missouri Pacific, was in itself fraudulent or reckless and improvident. As to the New Orleans, the plan contemplated that the Missouri Pacific would advance money to the New Orleans for betterments and additions on short time loans, and that at intervals when the indebtedness became of sufficient size bond issues would be sold to refund it. The worst of the depression came coincidentally with the time when such refunding was expected to be made and made the refunding impossible.

"From testimony frankly given by himself, and on the face of the record, it clearly appears as to the case Comstock presented to the court on the objections herein involved that after the report of the Senate subcommittee which criticized the Missouri Pacific management of the New Orleans, and in 1940, Comstock bought a few of the 5¼% Serial bonds at about 10 cents on the dollar and then employed an accountant to make studies of the accounts, records and reports of Missouri Pacific management of the New Orleans and based his charges on the accountant's studies. He tendered no extraneous or newly discovered evidence. As the period of Missouri Pacific alleged mismanagement of the New Orleans (1925 to 1933) had expired many years before Com-

stock acquired his interest in New Orleans stock, a court would not ordinarily have felt obliged at his instance to try the merits of charges of mismanagement committed in long past years and claimed to be provable by contemporaneous records which were at all times accessible. It would not sanction such buying into a lawsuit.

"But here the plan for Missouri Pacific reorganization was before the court to be approved or disapproved, according to whether it was or was not fair and equitable. The proposed plan included as one of its essential postulates that the New Orleans was indebted to the Missouri Pacific in a sum which with accumulated interest amounts to around eighteen million dollars. No judicial determination upon the validity of the debt had ever been made in any adversary proceedings throughout the thirteen year course of the Section 77 proceedings and bonds like Comstock's are outstanding in many hands aggregating some $13,500,000. Although the court was of opinion that not only Comstock but all other owners of the Missouri Pacific 5¼% Serial Bonds secured by New Orleans stock who had at all times trustee representation and in great part representation by counsel, had been guilty of laches in failing for so many years to assert and present proof and try out before the Commission and the court the alleged invalidity of the debt almost entirely evidenced by the notes,[3] it concluded that judicial adjudication should be made as to the debt and that the court should, and therefore it did, hear the evidence covering the whole period of management of the New Orleans by the Missouri Pacific, and it tried out the whole case and

[3] "There was also at all times a substantial minority stockholding interest in the New Orleans with means to keep informed of the affairs of the regulated railroad corporation."

all the charges presented by Comstock on the merits.

"The expert accountant called by Comstock produced a large number of exhibits which he had prepared from the books, records and reports of the individual companies and explained in connection with them the inferences he had drawn from his studies and expressed his opinions tending to support the Comstock charges. He centered his attack largely on that part of the accounting system of the railroads through which the New Orleans and its fourteen subsidiary railroads had been treated as a unit for financing purposes and the financial condition indicated by consolidated balance sheets. By disregarding the system character of all the Gulf Coast Lines held under New Orleans ownership he inferred a much less favorable financial position for the New Orleans than was shown by its consolidated balance sheets. He had no personal knowledge of the railroad operations or transactions covered by his testimony.

"The Group of Institutional Investors Holding First and Refunding Mortgage Bonds of Missouri Pacific and The Protective Committee for the holders of General Mortgage bonds of Missouri Pacific to sustain the burden of Missouri Pacific defense called as their witnesses on the trial the railroad men who had engaged, each in his own department, in all of the transactions and railroad operations and the records made thereof throughout the period involved, and they testified of and concerning matters with which they were intimately familiar. Also Mr. William Wyer, who after his graduation from Yale and Massachusetts Institute of Technology served in railroad construction and operation for the government during World War I, and in U. S. Railroad Administration during Federal Control, and afterwards in various

positions in the Division of Operations, Division of Accounts and Assistant to the Comptroller. From 1920 to 1927 he occupied important positions with the Southern Railroad Company and the Denver Rio Grande and Western, the latter being 'fifty percent. owned by the Missouri Pacific so it was considered a part of the Missouri Pacific System.' In February, 1929, he became Assistant to the Chairman of the Board of Directors of the Missouri Pacific who was also Chairman of the Board of the New Orleans, and later in the year he became Secretary and Treasurer of the Missouri Pacific and an officer on all the subsidiaries, except as to the Texas and Pacific he was such officers for only six years. He handled a great many of the financial matters involving the Missouri Pacific and the New Orleans under the supervision of the Chairman of the Board of the Missouri Pacific. In 1933 he started studies which have provided substantially all of the studies upon which the various plans of reorganization have been based. He was at the time of testifying the chief executive officer of the Central Railroad of New Jersey. He was thoroughly informed and conversant with the Missouri Pacific policies of system operation and of expanding and financing, and with the railroad operations and the financial transactions upon which the validity or invalidity of the debt in controversy depend, as well as the accounting and reporting system maintained for disclosing and reporting them. He had an important part in what was done, was in touch with substantially the whole course of the management of the New Orleans under attack and he gave his extensive testimony upon direct and cross examination with obvious understanding of its relevancy and importance. His testimony, supported by many accounting and summarizing exhibits, was to the effect

that Missouri Pacific management of New Orleans was honest and was beneficial to New Orleans.

"Judge Moore, presiding at the trial, has exercised the jurisdiction in these Section 77 proceedings through most of their course, and his questions, comments and directions reflect his close attention to and understanding of the testimony and its application through the trial. His written opinion is reported 64 F. Supp. 64. His findings of facts and conclusions of law were drawn with care and thoroughness, and appear to us to be responsive to all the issues presented by the objections here involved and the evidence that was adduced, and the appellant has not called our attention to any refusal on the part of the court to make findings in respect to any other issues claimed to have been presented. The vast extent of the railroad business carried on by the Missouri Pacific and the New Orleans during the long past period of alleged mismanagement and the intricate corporate structures of the railroads, inevitably presented most serious problems in the attempts of accountants to picture what their course of operations and financial transactions had been. The New Orleans had in some respects the character of a holding company in that it operated itself only a small fraction (around 11%) of the railroad mileage of its railroad system but owned the stocks and securities of some fourteen other railroad companies and was the only one of the group of railroads comprising its railroad system which had any relatively substantial amount of securities outstanding in the hands of the public. For financing purposes the individual roads in the group were dependent upon the New Orleans which, acting for the group in respect to financing, presented the necessary unitary functioning principal. There was fundamental controversy as to what inferences should

be drawn from the available accounts to establish the true financial condition of the New Orleans at different times within the period and to establish and present the financial results of the railroad operations that were carried on. Mr. Wyer testified that the identified consolidated balance sheets compiled under direction of the Missouri Pacific and New Orleans officers were the summarizing records which were submitted to the Board of Directors to keep its members informed in the discharge of their duties. It was through the use of the consolidated balance sheets that the New Orleans and its affiliated railroads were treated as a unit in the financing of the companies throughout Missouri Pacific management. Though he could not say what went on in the minds of others, his testimony leaves no room to doubt that the Board members well understood how the computations were arrived at and that the members relied on them in the usual course of the financing of the business. He was intimately familiar with all phases of the accounting in which they culminate, and although he admitted that perfection was never attained, his testimony together with that of the railroad officers and employees who did the work, fully justified the trial court's reliance upon the consolidated balance sheets in his findings and conclusions. But the disputes and conflicts of testimony in respect to the accounts and the inferences to be drawn were all issues of fact. The court recognized fully all the burden of obligation imposed by law upon the Missouri Pacific in respect to its management of the New Orleans and that if the Comstock charges could be proved and the indebtedness in issue was invalid or ought not in equity to be enforced against New Orleans stockholders, the then pending plan of reorganization could not stand.

qualified to deal. It has had no opportunity to express a view on this issue, which was allowed to go by default before it, and the courts do not have the benefit of the Commission's informed judgment on the matter involved. To by-pass the Commission and make the court the original forum for such contentions is not to be encouraged.

But the court did not refuse to hear the objections on their merits. In view of the functions cast upon the court in such cases, we cannot say that it may not, in its discretion, consider objections on their merits even though they have not been presented to the Commission. Some circumstances might be disclosed to indicate a remand for their consideration by the Commission. They might indicate that the courts would withhold approval, not out of deference to the objecting parties' rights but because of the broad responsibility laid upon the court for the equity and fairness of the plan as a whole. The court will be diligent to protect itself and the public from approval of unfair plans, even by default, and may take for its own use evidence no party would have a right to force upon it. The court below evidently considered the circumstances of this case to warrant such inquiry into the merits, and we do not inquire whether the discretion was wisely exercised.

The case on the merits presents, as to several different and complicated transactions, a single question of law. It is said that our decision in *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307, requires that the claim of Missouri Pacific against the New Orleans be disallowed and petitioner's objections sustained. In that case this Court reformulated for application to reorganization cases a wholesome equity doctrine to the effect that a claim against a debtor subsidiary be disallowed or at least subordinated when the claimant corporation has wholly dominated and controlled the subsidiary and in the transactions creating the debt has breached its fiduciary

duty and acted both to its own benefit and to the detriment of the debtor. As we later said of the decision, "This was based on the equities of the case—the history of spoliation, mismanagement and faithless stewardship of the affairs of the subsidiary by Standard to the detriment of the public investors." *Pepper* v. *Litton*, 308 U. S. 295, 308.

Petitioner asks us to declare the same result in this case despite explicit and unchallenged findings that, in its dealings with New Orleans during the period involved, "the Missouri Pacific acted in good faith and with due regard to its obligations, legal and equitable, to the New Orleans and its security holders," that the "effect of the control by the Missouri Pacific of the Gulf Coast Lines was beneficial and advantageous to the New Orleans and the holders and pledges of its securities," that all dividends in question "were paid either out of the earned surplus of the New Orleans available for dividends or out of the net income of the New Orleans after payment of all prior charges against income," and that the subordination of the claim as asked "would unjustly enrich the holders of the capital stock of the New Orleans and the holders of the Secured Serial Bonds," as well as other more detailed findings to the same effect.

In the case before us there was domination of the subsidiary, a relationship between corporations which the law has not seen fit to proscribe. By the application of long-standing principles of equity this Court fashioned the rule in the *Taylor* case to prevent a fiduciary in such a position from enriching itself by breach of its trust. It is not mere existence of an opportunity to do wrong that brings the rule into play; it is the unconscionable use of the opportunity afforded by the domination to advantage itself at the injury of the subsidiary that deprives the wrongdoer of the fruits of his wrong. On the findings in this case, the claim of Missouri Pacific was the outgrowth

of complicated but legitimate good faith business transactions, neither in design or effect producing injury to the petitioner or the interests for which he speaks.

Special emphasis has been placed on the fact that under control of the Missouri Pacific dividends were paid by the subsidiary at a time when it was borrowing money represented by this claim. It is clear from the findings that the dividends were paid out of current earnings or surplus, and not in violation of law or contract. Only in 1929 did New Orleans earn currently sufficient to pay its dividends. Nevertheless in all three years there was sufficient earned surplus legally to permit dividends. Heavy investments in improvements may require borrowings for dividends; but no law or public policy requires a corporation to finance capital additions out of earnings or to pass dividends because of low current earnings when past earnings are available for dividend purposes. These past earnings may be used to compensate the capital that produced them, and capital additions may be made from funds borrowed or raised by issues of capital securities, so long as the authorizations required in the case of railroads are obtained. No question is raised as to the authority to borrow.

While the contemporaneous borrowing to pay for capital additions, and payment of dividends, is not in itself illegal, it would, of course, come under the ban of the *Taylor* decision if it were carried out in breach of good faith for the advantage of the holding company to the detriment of the subsidiary. But the findings of good faith, fair dealing and freedom from fraud or overreaching cover the dividend policy as well as other questioned transactions. Such being the facts, the allowance of the claim is not error of law.

The findings here do not stop with holding that the questioned transactions were intended to and did benefit

the system as a whole. An over-all benefit to the system might be attained at the injury of one of its units and the security holders of that unit. But here the finding of good faith and of benefit applies to the New Orleans and its security holders as well as to the system generally. The finding is unequivocal that the control of Missouri Pacific not only "was in good faith and with due regard to its obligations, legal and equitable, to the New Orleans and its security holders," but also that its control of the Gulf Coast Lines "was beneficial and advantageous to the New Orleans and the holders and pledgees of its securities." The criticised transactions are thus not only exonerated of evil or illegal intent but are also established as beneficial rather than injurious to the interests which now challenge them. The findings to that effect are entitled to special weight where, as here, they are based on the District Judge's complete familiarity with the case. *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western R. Co.*, 328 U. S. 495, 533. Affirmed by the Circuit Court of Appeals, they are, under the rule concerning concurrent findings, and on the basis of our grant of certiorari, conclusive in this Court.

Disallowance of petitioner's objections on such findings was not error of law. In this view of the case we need not consider questions tendered as to validity or effect of the issuance of notes or of their pledge.

The judgment below in No. 451 is

Affirmed.

Petitions in Nos. 452, 453 and 454 were addressed to dismissals by the Court of Appeals from the same order as No. 451 but taken in different names. The petitions were filed as safeguards against procedural objections to review of the order. The writs in these cases are dismissed.

SUPREME COURT OF THE UNITED STATES

Nos. 451–454.—October Term, 1947.

Andrew W. Comstock, a Holder of Missouri Pacific Railroad Company 5¼% Secured Serial Gold Bonds, etc., Petitioner,

451 *v.*

Group of Institutional Investors, etc., et al.

New Orleans, Texas and Mexico Railway Company, Debtor, etc., Petitioner,

452 *v.*

Group of Institutional Investors, etc., et al.

Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, etc., Petitioner,

453 *v.*

Group of Institutional Investors, etc., et al.

Andrew W. Comstock, Petitioner,

454 *v.*

Guy A. Thompson, Trustee of the New Orleans, Texas and Mexico Railway Company, Debtor, et al.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[June 21, 1948.]

Mr. Justice Murphy, with whom Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Rutledge agree, dissenting.

The rule that makes concurrent findings of fact by two courts below binding on us in the absence of some very exceptional error is a wise one. But it is not a rule to

be applied in a blind manner simply because a case involves a complex factual situation. In my view, there is an exceptional error involved in the conclusions reached by the District Court and affirmed by the Circuit Court of Appeals, an error that is apparent on the face of the District Court's findings. And since this error is not sufficiently illuminated by the opinion of the Circuit Court of Appeals, as quoted by the majority in this Court, I deem it essential to make an independent statement of the relevant facts as found by the District Court.

This case grows out of the joint reorganization of the Missouri Pacific Railroad Company and affiliated railroad corporations under § 77 of the Bankruptcy Act, 11 U. S. C. § 205. It involves a claim of $10,565,226.78 filed by the Missouri Pacific against one of its subsidiaries which was also undergoing reorganization and the application to that claim of the so-called Deep Rock doctrine enunciated in *Taylor* v. *Standard Gas Co.*, 306 U. S. 307.

It is unnecessary for present purposes to detail the long, complicated and still unfinished proceedings which have marked the reorganization of the Missouri Pacific railway system. The instant proceeding is directly related to a revised plan of reorganization approved in 1944 by the Interstate Commerce Commission. The District Court below then heard objections to the plan by various parties in interest. Included among them was the petitioner Comstock. He stated that he owned $80,000 principal amount of the 5¼% Secured Serial Gold Bonds of the Missouri Pacific. His objections were filed on behalf of himself, of fourteen other public investors holding in excess of $900,000 additional principal amount of these bonds, and of all other owners and holders of the bonds. A committee of these bondholders, representing an additional $315,000 principal amount of the bonds, also joined in Comstock's objections. Of the total principal

amount of these bonds publicly outstanding, about 11½% were specifically represented by Comstock.

Comstock's objection No. 19, which is our sole concern, related to the validity and priority of a $10,565,226.78 claim filed by the Missouri Pacific (hereinafter called MOP) against its subsidiary New Orleans, Texas and Mexico Railway Co. (hereinafter called NOTM) in the joint reorganization proceedings. It appears that MOP had acquired the controlling interest in NOTM's common stock in 1924 and had completely dominated and controlled NOTM until the reorganization proceedings began in 1933. MOP's claim against NOTM was based upon "cash advances for operation, interest payments, etc., at various times from March, 1929, to February, 1933, both inclusive." Most of the NOTM stock which MOP held was pledged as security for the class of MOP 5¼% secured bonds which Comstock owned, the pledge constituting 82% of the outstanding shares of NOTM's sole class of stock. MOP sought to put its claim against NOTM ahead of the claims of the holders of these MOP bonds who looked to the NOTM common stock for security. The revised plan of reorganization gave effect to MOP's desire in this respect.

A separate hearing was held by the District Court on Comstock's objection No. 19. After carefully considering the voluminous and complicated evidence adduced at this hearing, the court entered a separate order overruling the objection and holding that the $10,565,226.78 claim should be allowed in full; with interest, this claim now aggregates more than $18,000,000. The court further held that this claim, so allowed, was entitled to priority over the claims of the public investors holding MOP 5¼% secured bonds. In addition, the court felt that objection No. 19 was not timely and should be barred from consideration under the doctrine of laches.

At the same time, the District Court entered another order overruling the other objections raised by Comstock and the other parties in interest and approving the revised plan of reorganization. An opinion was then filed detailing the reasons for the two orders. *In re Missouri Pacific R. Co.*, 64 F. Supp. 64. Comstock appealed from the order dismissing his objection No. 19.[1] The Eighth Circuit Court of Appeals affirmed the District Court's action on this objection, holding that the findings of that court were not clearly erroneous. *Comstock* v. *Group of Institutional Investors*, 163 F. 2d 350. At the suggestion of the Interstate Commerce Commission, the Circuit Court of Appeals then remanded the revised plan of reorganization back to the Commission for reconsideration and revision. *Wright* v. *Group of Institutional Investors*, 163 F. 2d 1022. The Commission has not yet disposed of the matter.

I.

For somewhat different reasons than those advanced by the Court, I agree that a judicial consideration of Comstock's objection No. 19 is not now precluded by the doctrine of laches.

The joint reorganization proceedings commenced in 1933. Comstock did not purchase any of the MOP 5¼%

[1] The leading party opposing Comstock on this appeal was the Group of Institutional Investors, holding first and refunding mortgage bonds of MOP. This group represented less than 10% of such bonds and admitted that it had "no financial interest in the controversy revolving about" the MOP claim, its only interest being to expedite a reorganization plan then under consideration. But this group offered the only evidence in the District Court in support of the MOP claim. Another party was the NOTM mortgage and income bondholders committee, which also admitted it had no direct interest in the MOP claim litigation. Other parties included MOP, the MOP common and preferred stockholders committees, the MOP trustee, Alleghany Corporation, and certain groups of creditors and indenture trustees. These parties are now respondents before us.

secured bonds until 1940, soon after a Senate subcommittee investigating railroads issued a report criticizing the MOP management of NOTM. S. Rep. No. 25, Part 9, 76th Cong., 3d Sess. He then bought some of the bonds at about 10 cents on the dollar and employed an accountant to study the relationships between MOP and NOTM prior to 1933. Not until 1943 did Comstock suggest that there might have been some irregularities on the part of MOP. And not until November, 1944, when he filed his objection No. 19 to the revised plan of reorganization, did he really press his allegations.

Prior to Comstock's objection, more than a decade of the reorganization process had produced no charge or revelation of impropriety as to MOP's $10,565,226.78 claim against NOTM. Numerous investigations and hearings had been held during that long period concerning the pre-reorganization administration of the affairs of MOP and its subsidiaries. The public holders of the MOP 5¼% secured bonds and other creditors had ample opportunity to question the allowance of the claim. But no charges were made until after Comstock purchased his bonds and conducted his own investigation. Many of the events to which objection No. 19 relates took place more than twenty years ago; and some of the persons who had personal knowledge of those events and who might have been able to testify in regard thereto are now dead.

I do not believe, however, that the doctrine of laches is properly applicable to the facts of this case. The District Court had before it a revised plan of reorganization of MOP and its subsidiaries, a plan which recognized that NOTM was indebted to MOP and which permitted MOP to collect that debt without subordination to other creditors. That court was duty bound to test this portion of the plan by the fair and equitable rule and to approve it only if the rule was found to be satisfied. *American*

Ins. Co. v. *Avon Park*, 311 U. S. 138, 145–146. The court's duty was nonetheless existent because an attack on the MOP claim came late in the day. Comstock's objection served only to emphasize the circumstances surrounding this indebtedness and to give the court an opportunity to inquire into the matter more fully than it might otherwise have done. Moreover, the fact that this objection had not previously been raised and adjudicated in the § 77 proceedings added to the appropriateness of a judicial determination of the validity of the debt at this juncture. Only by examining the matter now could the court be certain whether the treatment accorded the debt by the reorganization plan was fair and equitable.

The motives which led Comstock to acquire his bond holdings and to raise his objection No. 19 are not pertinent to the performance of the District Court's duty of testing the fairness of the reorganization plan. Nor is it decisive under these circumstances that the objection might have been raised earlier by Comstock or some other bondholder. It is enough that the matter was presented in an appropriate fashion at a time when the court was compelled to pass judgment upon the reorganization plan and at a time when no prejudicial change in the position of other parties had yet occurred.

In this connection, it is noteworthy that the Interstate Commerce Commission at an early stage in the § 77 proceedings held that the validity of the MOP claim is a matter "for litigation in the Courts." Thus Comstock would likely have been unsuccessful had he attempted to secure a determination of his objection by the Commission before going to court. The Court today, however, expressly holds that the Deep Rock issues raised by Comstock involve matters over which the Commission has jurisdiction and with which it is especially qualified to deal. See *Schwabacher* v. *United States*, 334

U. S. —. On this phase of the case, I am in agreement with the Court. The Commission should determine the applicability of the Deep Rock doctrine to railroad reorgazination plans which it formulates. But since the Commission had previously refused to adjudicate the merits of the MOP claim and since Comstock's objection has been thoroughly aired in the District Court, it is inappropriate to remand the case now to the Commission for an expression of its views.

Despite the claimed difficulties due to the age of the pertinent events and the death of some of the witnesses, the District Court was able to give a comprehensive treatment to Comstock's objection and to render an informed judgment on the fairness of MOP's claim against NOTM. Many of the issues revolved about written evidence and statistics. And the court was able to draw upon its intimate knowledge of the MOP-NOTM relationships, knowledge gained from long association with the reorganization proceedings. Hence the court could and did perform fully its function as to that portion of the revised reorganization plan with which objection No. 19 was concerned.

In this situation, the desirability and necessity of determining the fairness and equitableness of MOP's claim far outweigh any possible inconvenience caused by the late presentation of the matter.

II.

In *Taylor* v. *Standard Gas Co., supra,* this Court established the principle that where a parent corporation has not only dominated but has mismanaged a subsidiary corporation, which is presently in bankruptcy or reorganization, and where the parent has a claim which is intimately related to the mismanagement, a court may refuse to permit the parent to assert the claim as a

creditor except in subordination to the claims of the subsidiary's other creditors and preferred stockholders. This principle, which has become known as the Deep Rock doctrine, is equitable in nature. As explained in *Pepper* v. *Litton*, 308 U. S. 295, 308, the doctrine was applied in the *Taylor* case on the basis of "the equities of the case—the history of spoliation, mismanagement, and faithless stewardship of the affairs of the subsidiary by Standard to the detriment of the public investors."

The fulcrum of Comstock's objection No. 19 is the Deep Rock doctrine. The argument is that the items constituting the $10,565,276.78 claim filed by MOP against NOTM are impregnated with MOP's alleged mismanagement of NOTM and that the claim should therefore be subordinated to the claim of the public investors in the MOP 5¼% secured bonds, who are secured by MOP's pledge of the NOTM common stock.

It is no answer to Comstock's claim that the District Court found that the transactions giving rise to the MOP claim were carried out in good faith. The equities which form the Deep Rock doctrine relate not alone to matters of bad faith. They are also concerned with the essential fairness and propriety of transactions from an objective standpoint. *Pepper* v. *Litton*, *supra*, 306. Like negligence, inequity may be present where there is the utmost subjective good faith. If there is mismanagement and if there is undue harm to the creditors and preferred stockholders of the subsidiary, the Deep Rock doctrine dictates subordination of the parent's claim. And if there be good faith on the part of the parent's officers, it hardly justifies ignoring the injury to the subsidiary's creditors and stockholders. Equity looks in all directions. Only in that way can the various interests in the corporate community be adequately protected.

Moreover, the issues raised by Comstock are not resolved by the District Court's finding that operational benefits accrued to NOTM and its subsidiaries by virtue of the transactions underlying MOP's claim. These transactions were undoubtedly tied in with the expansion program which MOP was undertaking during this period. But a breach of fiduciary obligations is not to be condoned by the presence of accompanying benefits where the subsidiary's assets are depleted to the injury of the stockholders and creditors of the subsidiary.

Nor does the fact that MOP, the parent, is insolvent bar an application of the Deep Rock doctrine to the facts of this case. The insolvency of the parent and the consequent effect of subordination upon the parent's innocent creditors are certainly factors to be considered. See *Consolidated Rock Co.* v. *Dubois*, 312 U. S. 510, 524; *Prudence Corp.* v. *Geist*, 316 U. S. 89, 97. But they are not necessarily decisive in all cases. The equities of a particular situation may turn upon something more than the solvency or insolvency of the parent. It may well be that a balancing of competing equities reveals that it is unjust to permit the advantages arising from the parent's breach of fiduciary duties to adhere to the benefit of the innocent creditors of the insolvent parent. Some other innocent parties may have an overriding interest which justifies subordination of the claim. Or the claim itself may be so tainted with inequity and unenforceability as to require subordination regardless of the parent's insolvency. And so the Deep Rock doctrine is as broad and as narrow as the equities in each case.

In this instance, I believe that the public holders of the MOP 5¼% secured bonds have a sufficiently direct and overriding interest in the financial well-being of NOTM to justify subordinating the MOP claim should it appear that this claim is intimately associated with

a breach of MOP's fiduciary duties. MOP secured these bonds with a pledge of the NOTM common stock and expressly undertook not to impeach the pledge. Any wrongful conduct by MOP which diminished the size of NOTM assets would impair the value of the NOTM stock. Subordination of the claim would thus tend to make the NOTM stock more valuable and to make possible a realization of MOP's express pledge to its bondholders. True, creditors of MOP other than the bondholders would be unable to benefit from whatever could be collected on the claim. But they were not the recipients of a pledge of NOTM stock and they lacked the immediate interest that the bondholders had in a proper performance of MOP's fiduciary duties. The indirect loss they would suffer by subordination is outweighed by the direct injury to the bondholders as a result of allowing the claim.

It is therefore essential to study the various transactions in detail to determine whether they represent the type of mismanagement by a parent which leads to subordination of the resulting claim against the subsidiary.

III.

The District Court found that during the period from March, 1929, to February, 1933, MOP advanced to NOTM the net sum, after deducting principal payments, of $10,565,226.78—which constitutes the claim in issue. Included in these advances was the greater portion of the $2,795,000 loaned to NOTM between November 30, 1928, and November 27, 1931, to make additions and improvements to the railroad properties of NOTM and other related subsidiaries. But each time one of these advances was made, there was an almost simultaneous payment of a dividend by NOTM on its stock, which was largely owned by MOP. This phenomenon is demonstrated in the following table:

Dates of—		Advances by MOP to NOTM	Dividends by NOTM	
Advances	Dividends		Total amount	Amount to MOP
Nov. 30, 1928	Dec. 1, 1928	$300,000	$259,576	$223,231
Feb. 28, 1929	Mar. 1, 1929	280,000	259,576	234,237
Aug. 31, 1929	Sept. 3, 1929	275,000	259,576	239,439
Nov. 29, 1929	Dec. 1, 1929	310,000	259,576	241,539
Feb. 28, 1930	Mar. 1, 1930	260,000	259,576	242,072
May 31, 1930	June 1, 1930	275,000	259,576	242,212
Nov. 29, 1930	Dec. 1, 1930	300,000	259,576	243,360
Feb. 25, 1931	Feb. 28, 1931	75,000	259,576	243,510
May 27, 1931	June 1, 1931	300,000	259,576	244,387
Aug. 29, 1931	Aug. 31, 1931	280,000	259,576	244,527
Nov. 27, 1931	Nov. 30, 1931–Dec. 1, 1931.	300,000	259,576	244,527
		*$2,795,000	$2,855,336	$2,683,051

*It is contended by the respondents that this figure should be reduced to $2,662,436, since the first two advances in November 1928, and February 1929, were repaid and since the excess of the advances over the dividends should not be counted.

It is said, however, that MOP's action in making these loans and receiving back the dividends followed a natural pattern of a company devoted to improving the properties of its subsidiaries, there being merely a "near coincidence as to the dates of certain dividends and advances." Reference is made in this respect to the relationship which MOP bears to the various companies in the Gulf Coast Lines system (hereinafter called GCL). In 1924, MOP acquired a controlling interest in NOTM and thereby inherited complete control of the GCL system, the rail lines of which are interlaced with others in the MOP system. NOTM at all times has been primarily a holding company owning all the stocks and bonds of the fourteen subsidiary companies constituting the GCL group, NOTM itself operating only about 11% of the total GCL mileage. Of the GCL operating companies, the St. Louis, Brownsville and Mexico Railway Co. (hereinafter called Brownsville) is the most important, operating about one-third of the GCL mileage and contributing from 61% to 84% of the group's income during the period

in question. NOTM is the only one of the GCL group which has securities outstanding in the hands of the public.

According to the District Court findings, MOP's policy in advancing the $2,795,000 to NOTM was to reimburse NOTM's treasury for additions and betterments to the properties of the GCL system. NOTM acted as banker for that system. The GCL subsidiaries were not in a position from 1925 to 1930 to finance their own improvements except out of earnings and by borrowing from NOTM. Most of their freight revenues were cleared through NOTM; as these items were received by NOTM, they were credited against the obligations created by the loans from NOTM to the subsidiaries. But since the total requirements of the subsidiaries for operating expenses, dividends and improvements were in excess of the receipts, the unpaid accounts mounted. Finally MOP had to begin loaning money to NOTM to cover these accounts. It is in this way that MOP's advances are said to have been directed toward the improvement program of the GCL system.

It is vigorously denied that these MOP advances were in any way used to pay for the almost simultaneous dividends from NOTM to MOP, such a contention being termed "superficial" and contrary to "basic principles of accounting." In support of that denial, an illustration is used. Assume that NOTM receives $200,000 cash from net earnings on January 31, when it is known that this amount will be needed to pay a bill for a new freight yard for a subsidiary. NOTM also knows that on April 1 a $100,000 cash dividend to MOP will be due. Instead of borrowing to pay for the new freight yard, NOTM uses the $200,000 cash for that purpose. Then, three days prior to the dividend date, NOTM borrows $100,000 from MOP to reimburse the NOTM treasury in part for the investment in the new freight yard. This saves NOTM about two months' interest on $100,000 of the

money spent for the freight yard. The fact that a $100,000 cash dividend is paid three days after the $100,000 loan is thought to be a mere coincidence, the dividend and the loan having no connection.

But in this illustration it is obvious that NOTM has insufficient cash to finance both the $200,000 freight yard and the $100,000 dividend. It has to borrow money for one purpose or the other. But to say that it here borrows $100,000 to help pay for the freight yard is unrealistic. NOTM has enough cash to pay for the freight yard and it uses the cash just for that purpose. Two months later it has the choice of (1) borrowing $100,000 and paying the dividend, or (2) not borrowing the money and not paying the dividend. It chooses the former course of action. By such action, NOTM has borrowed money to pay a dividend.

The foregoing illustration indicates what the record in this case amply demonstrates—namely, that the MOP advances found by the District Court to have been for the payment of GCL improvements were in reality advances for the payment of dividends by NOTM, dividends which for the most part went to MOP. Considered as a separate entity, NOTM rarely had enough income from the time MOP acquired control in 1924 to the start of reorganization in 1933 to pay the regular dividends; loans were essential if MOP was to continue to receive its share of these dividends.

Year	Net income	Dividends
1925	$839,679.00	$1,038,198
1926	1,393,806.58	1,038,198
1927	937,098.90	1,038,198
1928	742,058.00	1,038,198
1929	1,153,257.54	1,038,198
1930	854,139.71	1,038,198
1931	*399,487.80	1,038,198
1932	(−951,607.76)	None

*After deduction of $3,155,000 for that portion of the dividends on Brownsville stock held by NOTM which was unpaid in 1931.

After studying these dividends from NOTM to MOP, the subcommittee of the Senate Committee on Interstate Commerce investigating railroads (composed of Senators Wheeler and Truman) concluded as follows:

"The N. O. T. & M. itself never earned enough to pay these dividends. In none of the 6 years, 1926 through 1931, did the N. O. T. & M. earn more than $605,000 (exclusive of dividends from its subsidiary, the St. Louis, Brownsville & Mexico). In 3 of the 6 years, the road showed a deficit after fixed charges. For the 6-year period considered as a whole its stated net income totaled a bare $90,000 (as against dividend declarations totaling $6,300,000).

"Even the $90,000 net income figure was a considerable overstatement. Each year the N. O. T. & M. regularly included in its operating expenses a certain sum for depreciation of its equipment. Consistently, year after year, the amount charged for depreciation was inadequate. A statement from the files of the railroad itself shows that for the period 1926 through 1930 the N. O. T. & M.'s net income was overstated (through understatement of depreciation) by more than $411,000. If the railroad's depreciation had been adequately charged, it would have shown a deficit for the 6 years 1926–1931 of $321,000 after fixed charges. Yet during this period the Missouri Pacific took $5,580,000 in dividends out of the N. O. T. & M." S. Rep. No. 25, Part 9, 76th Cong., 3d Sess., pp. 2–3.

The consolidated picture of NOTM and its GCL subsidiaries was equally indicative of the lack of an ability to pay dividends to MOP without borrowing.

Year	Net income	Dividends
1925	$2,547,633	$1,038,198
1926	1,783,278	1,038,198
1927	(−202,438)	1,038,198
1928	956,433	1,038,198
1929	845,064	1,038,198
1930	674,950	1,038,198
1931	(−1,122,422)	1,038,198

Care was taken, however, to avoid the appearance of borrowing from MOP to pay dividends to MOP, a practice of doubtful legality. Whenever it was found that NOTM had inadequate income to meet a prospective dividend payment, MOP officers would direct Brownsville, NOTM's principal subsidiary, to take steps to declare a dividend on its stock, all of which was held by NOTM. Usually this dividend was the precise amount by which NOTM lacked money to pay its own dividend.[2] But Brownsville invariably was unable to

[2] The method by which MOP would bring about the Brownsville declaration of dividends is shown by the following typical exchange of letters between NOTM and MOP officials:

"Houston, January 10, 1931.

"Mr. L. W. Baldwin: The net income of the NOT&M for the three months ending November 30th, 1930, reflects a deficit of $56,613.10, which is $316,188.85 short of quarterly dividend requirements of the NOT&M due December 1st, 1930.

"I am attaching hereto statement showing result of operations for the months of September, October, and November 1930.

"Following past practice, we will arrange for Mr. Cole to list for action at the next meeting of the Board of Directors of the StLB&M [Brownsville], a resolution providing that dividend be declared out of the surplus of the StLB&M in favor of the NOT&M.

"H. R. SAFFORD.
"F."

The reply to the foregoing letter follows:

"St. Louis, Mo., January 13, 1931.

"Mr. Safford: Referring to your letter of January 10th, file 482-2, with reference to declaring dividend out of the surplus of the St. Louis, Brownsville & Mexico Railway Company in favor of the New Orleans, Texas & Mexico Railway Company.

"It will be satisfactory to handle this in line with your letter.

"L. W. BALDWIN,
"Per C. D. P."

On June 17, 1931, Brownsville declared a dividend of $316,188.85, the precise amount of the NOTM deficit; the dividend was declared effective as of November 30, 1930, one day prior to the dividend date for NOTM's stock.

make a cash payment of its dividends to NOTM and many of its pre-1931 dividend declarations were considered collected by NOTM only at the expense of leaving unpaid Brownsville's debts to NOTM for essential supplies. These paper dividend declarations were capped in 1931 when Brownsville was ordered to declare dividends to NOTM of $4,155,090; in that year Brownsville earned but $398,000. The Bureau of Accounts of the Interstate Commerce Commission in 1936 informed NOTM that these 1931 dividends were declared at a time when NOTM was aware that Brownsville "was without funds to pay it, and even on the basis of past experience the earnings of the company, had business continued good, would not have been adequate to make the payment until some future date." This fact rendered the dividends improper under Commission rules. And while it was too late to correct the income accounts of NOTM which had already been closed, NOTM was directed to write off the unpaid portion of the 1931 dividends (some $1,400,000) through profit and loss.

This 1931 incident grew out of the fact that NOTM was operating that year at a great loss. It began that year with a profit-and-loss balance of only $709,000 and operated at a loss of $606,000. It also had to charge off $875,000 to correct its former inadequate depreciation accruals. By the end of 1931, NOTM would have shown a debit profit-and-loss balance of $772,000 or more. MOP, of course, was demanding payment of the usual $1,038,000 dividend for the year. "The problem was solved as it had been solved in previous years—by milking the Brownsville. But this time the milking would have to be thorough. . . . The solution found was to cause the Brownsville to declare an extraordinary dividend of

$3,500,000—a dividend seven times the par value of the stock upon which it was declared. Other Brownsville dividends to the N. O. T. & M. brought the total for the year to $4,155,000, enough to fill up the N. O. T. M.'s profit-and-loss deficit and to enable the latter to declare a $1,038,000 dividend in favor chiefly of the Missouri Pacific." S. Rep. No. 25, Part 9, 76th Cong., 3d Sess., p. 10.

Thus the Brownsville dividend declarations gave NOTM earned surpluses on [illegible] without giving it any cash with which to pay its dividends to MOP. Dividends declared by Brownsville were entered as income to NOTM even though they were not paid. An ostensible legal basis was thereby established for a declaration of dividends to MOP. NOTM would then borrow money from MOP to pay for those dividends. This again was largely a paper transaction. The earned surplus upon which the Court today places great reliance in affirming the District Court's findings was but a figment of the MOP imagination. "The intricate accounting devices evolved by railroad and holding company officials in an attempt to legalize dividend payments unjustified by earnings resulted, both in 1930 and 1931, in the payment of N. O. T. & M. dividends out of capital, a procedure disguised in 1930 behind faulty bookkeeping and in 1931 behind an out-and-out violation of Interstate Commerce Commission accounting regulations." S. Rep. No. 25, Part 9, 76th Cong., 3d Sess., p. 14.

By advancing to NOTM $2,795,000, MOP received back $2,654,000 in dividends within a few days after the various loans, making a total net advance of $141,000. MOP's cash position was unaffected by these various transactions, the NOTM dividends merely giving it a paper profit and loss balance out of which to declare its own

dividends. Hence MOP, like NOTM, was forced to borrow money; it did so from outside sources. Yet MOP now seeks to claim nearly all of the $2,795,000 plus interest, an aggregate of about $4,795,000, for engaging in these bookkeeping transactions and for extending credit to the extent of $141,000.

NOTM's fiscal affairs in this respect have certainly not "been conducted with an eye single to its own interests" within the meaning of the Deep Rock doctrine. *Taylor* v. *Standard Gas Co., supra,* 323. Nor can these transactions be said to meet the test of "inherent fairness" and the requirement of an "arm's length bargain," which are essential ingredients of that doctrine. *Pepper* v. *Litton, supra,* 306–307. Here, as in the *Taylor* case, dividends were declared in the face of the fact that NOTM had not the cash available to pay them and was, at the time, borrowing in large amounts from MOP. And see *In re Commonwealth Light & Power Co.,* 141 F. 2d 734, 738. Compelling a subsidiary to pay dividends under these circumstances is the type of mismanagement by a parent which leads to the subordination of the resulting indebtedness.

IV.

Another part of the $10,565,226.78 MOP claim related to an intercompany adjustment of $1,261,009.84 made during October, 1932, at the height of the depression and shortly before the § 77 proceedings began.

The International-Great Northern Railroad Co. (hereinafter called the I-GN) was a subsidiary of NOTM, although not deemed a part of the GCL system. I-GN had advanced cash or delivered materials to ten of NOTM's GCL subsidiaries; as of October 31, 1932, these ten companies were indebted to I-GN in the sum of $1,261,009.84 on account of these transactions. On the same date, I-GN was indebted to MOP in an amount in excess of $1,261,009.84.

It was known at this time that the I-GN claims against the NOTM subsidiaries were presently uncollectible. It was also apparent that NOTM was in better financial health than I-GN. MOP, which was then in need of loans from outside sources, sought to improve its own financial condition by shifting debtors. It did this by increasing its claim against NOTM by $1,261,009.84 and by decreasing its claim against I-GN by that same figure. To make this bookkeeping shuffle possible, I-GN credited NOTM and its other subsidiaries with the payment of the $1,261,009.84 debt which those subsidiaries owed. MOP then credited I-GN with payment of a like amount, crediting it against I-GN's debt to MOP. NOTM thereby found itself obligated to pay MOP an additional $1,261,009.84. Appropriate entries were made, of course, in the journals of the affected companies.

NOTM had not previously been liable to pay this amount to MOP; nor did it receive anything of value from MOP in return for assuming the debt. Yet no valid reason is suggested why NOTM should have been forced to shoulder this obligation, thereby decreasing the assets available to its creditors and stockholders. Certainly it was not essential, as has been claimed, that NOTM acquire the debt to protect its ownership and control of its GCL subsidiaries. NOTM was invulnerable in that respect, owning all the securities of the subsidiaries, and the addition of this debt added no new protection. The contention is also made that NOTM owed a fiduciary obligation to I-GN, its subsidiary, and that it was NOTM's duty to relieve I-GN of any uncollectible items owed by other NOTM subsidiaries. The fiduciary obligation grows out of the fact that NOTM owned all the securities of its GCL subsidiaries. This contention is closely allied to the theory that NOTM and the subsidiaries are a single financial entity and that it is immaterial which company within that entity is liable for

the debt. But the close relationship of NOTM and its GCL subsidiaries does not legitimatize the intercompany adjustment from an equitable point of view. In this situation, we are dealing with the rights of creditors and stockholders who are directly interested in the financial well-being of NOTM as an enterprise separate and distinct from its subsidiaries. Hence it is necessary here to recognize and give effect to the corporate distinctions between NOTM and its GCL subsidiaries.

The resulting picture is one of a bookkeeping write-up of NOTM indebtedness at a time when NOTM was on the threshold of reorganization. NOTM received nothing whatever to compensate for the increase in its debt structure. The increase served only to enable MOP, the parent, to possess what was thought to be a more favorable creditor's position. Such treatment of a subsidiary's debt structure does not square with a parent's fiduciary position. A subsidiary is entitled to be saddled by a parent only with those debts which may fairly be allocated to it, debts which grow out of legitimate business transactions. To transfer debts promiscuously from one subsidiary to another merely to augment the parent's creditor status is to inflict an injustice upon the creditors and stockholders of the subsidiary to which the debt is shifted. It is a type of mismanagement of a subsidiary which properly calls the Deep Rock doctrine into operation, causing the subordination of the parent's claim for the amount of the transferred debt.

V.

The remainder of the $10,565,226.78 claim concerned the advances made by MOP to NOTM to acquire five Texas "feeder" railroad lines at a cost of over $5,500,000.

Comstock's contention in this respect is that the acquisition of these lines was for the sole benefit of MOP and

I-GN, rather than for NOTM or the GCL system. Reference is made to a statement of the Interstate Commerce Commission that these "feeder" lines "were really acquired for the benefit of the entire MOP system. They have usually been operated at a deficit since acquisition." *Missouri Pacific R. Co. Reorganization,* 239 I. C. C. 7, 71. Moreover, some of the "feeder" lines are said not to connect at all with the lines of NOTM or its GCL subsidiaries. And it is thought that some of the MOP advances were used to cover operating deficits of the acquired property. Such is the basis of the objection to the recognition of MOP's claim against NOTM for the cost of the "feeder" lines.

There is nothing in the record to support an application of the Deep Rock doctrine to this aspect of MOP's claim. The use of NOTM to acquire subsidiary rail lines which have subsequently been operated at a loss does not necessarily indicate improper action by MOP; a mere mistake in business judgment may be all that was involved. And the fact that the acquisition may have been primarily for the benefit of some part of the MOP system other than the GCL companies does not necessarily mean that the acquisition was outside the legitimate scope of the functions of NOTM, a holding company in the MOP system.

Indeed, the main thrust of Comstock's objection to this segment of the MOP claim is directed toward the entire history of MOP's management of NOTM. The thought is that the relationship of the parent and the subsidiary has been so complex and so saturated with mismanagement as to warrant subordination of the entire claim of the parent without bothering to differentiate between particular transactions. See *Taylor* v. *Standard Gas Co., supra,* 323. But the record does not support such an approach to the MOP-NOTM relationship. There have been, as we have seen, two examples of mismanagement on MOP's part that warrant the application

of the Deep Rock doctrine. But those situations are separable in nature from the other transactions between MOP and NOTM. And the Deep Rock doctrine is not one that operates to bar an entire parental claim if only a separable portion of it is inequitable. It is only where, as in the *Taylor* case, the parent-subsidiary relationship has been so complex that it is impossible to restore the subsidiary to the position it would have been in but for the parent's mismanagement that the entire claim may be subordinated without distinguishing the good transactions from the bad. Such is not the situation in this case.

VI.

From the findings of the District Court and the uncontested facts in the record, I can only conclude that of the $10,565,226.78 MOP claim, the portion of the $2,795,000 relating to dividend advances during the period in question and the $1,261,009.84 relating to the intercompany bookkeeping transaction should be subordinated to the claims of the pledgees of NOTM stock. In holding otherwise, the District Court committed an error which this Court should not overlook.